Supreme Court, U. S.
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80-223

No.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONALD D. HOWE, ET AL., *Petitioners*

v.

ALLIED VAN LINES, INC., ET AL., *Respondents*

(Additional Petitioners and Respondents listed on page 1)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Whether interstate motor common carriers may limit their liability for loss or damage to household goods of members of the armed services shipped at government expense without having complied with the provisions of (former) 49 U.S.C. §20(11), now 49 U.S.C. §§11707 and 10730 (1980).

Other parties involved in this petition are:

Jerry P. Hill, *Petitioner, v.* Trans-American Van Service, Inc., *Respondent*

United States Automobile Association, *Petitioner, v.* Aero Mayflower Transit Co., Inc. and United States of America, *Respondents*

Dale DeFrank, *Petitioner, v.* Pyramid Van Lines, Inc., *Respondent*

Norman R. Foley, *Petitioner, v.* American Red Ball Transit Co., Inc. *Respondent*

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United Services Automobile Association, *Petitioner, v.* Rocky Ford Moving Vans, Inc., and United States of America, *Respondents.*

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October Term, 1980 No. ——

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To The Honorable, the Chief Justice of the United States and the Associate Justices of the United States Supreme Court:

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*Other parties involved in this petition are:

Jerry P. Hill, *Petitioner, v.* Trans-American Van Service, Inc., *Respondent*

United States Automobile Association, *Petitioner, v.* Aero Mayflower Transit Co., Inc. and United States of America, *Respondents*

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The Petitioners, Donald D. Howe, et al., pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above entitled cases on May 9, 1980.

OPINIONS BELOW

The findings of fact and conclusions of law of the United States District Court for the Eastern District of Pennsylvania, orally delivered on March 29, 1979, are unreported. The transcript is printed in the Appendix, which is hereafter cited by its page as "A- " (A1). The opinion rendered by the United States Court of Appeals for the Third Circuit, dated May 9, 1980, affirming the judgment of the District Court is not yet officially reported and is printed in the Appendix at A25.

STATUTES INVOLVED

See Appendix at A53.

JURISDICTION

The Judgment of the United States Court of Appeals for the Third Circuit was entered May 9, 1980, and this Petition for Certiorari was filed within ninety days of that date. No petition for rehearing was filed. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether interstate motor common carriers may limit their liability for loss or damage to household goods of members of the armed services shipped at government expense without having complied with the provisions of (former) 49 U.S.C. §20(11), now 49 U.S.C. §§11707 and 10730 (1980).

STATEMENT OF THE CASES

The Supreme Court is requested to review the judgment rendered by the United States Court of Appeals for the Third Circuit disposing of the appeals taken in 12 cases which had been combined as related cases in the United States District Court for the Eastern District of Pennsylvania and consolidated for purposes of briefing and argument in the Court of Appeals. Reduced to its simplest terms, the question common to all the cases is: If an interstate motor common carrier's liability for loss or damage to its household goods cargo is virtually absolute, and it may not limit that liability by agreement except under closely circumscribed conditions, is the situation different when the household goods are owned by members of the armed services and the Department of Defense is paying the shipping charges?

In each of the 12 cases the serviceman's household goods, shipped at government expense on changes of station or separation from the service, were lost or damaged. Suit was brought against the carriers for the full actual loss under 49 U.S.C. §20(11) (1976), Federal jurisdiction being invoked under that statute as well as 28 U.S.C. §1337 (1948). The carriers conceded liabilility but contended that they had effectively limited that liability to the amount of 60 cents per pound per article by the tender submitted to the Department of Defense. The parties in all the cases agreed that since the material facts were substantially similar and undisputed, the District Court would decide the controlling and common issue on the stipulation of facts filed in one case: *Donald D. Howe v. Allied Van Lines, Inc.* and that decision would apply to the others. The District Court found that the carriers had effectively limited their liability and entered judgment in all cases accordingly. The Court of Appeals for the Third Circuit affirmed on May 9, 1980.

REASONS FOR GRANTING THE WRIT

POINT 1

The Decision Exempts a Major Operation of the Nation's Moving Van Industry from the Liability for Cargo Damage Placed upon Such Common Carriers by the Controlling Statute and is in Direct Conflict with the Decisions of this Court and Other Courts of Appeals as Well as the Position of the Interstate Commerce Commission.

1. The Decision Conflicts with Other Decisions which Hold that the Provisions of 49 U.S.C. §20(11) Must Be Strictly Construed.

The statute applicable to common carriers, declaring unlawful and void *any* attempt by *any* interstate common carrier to limit its liability for property loss, is Section 20(11) of the Interstate Commerce Act, the popularly named Carmack Amendment, Act of June 29, 1906, Chap. 359, 34 Stat. 595 as amended by the Cummins Amendment, Act of March 4, 1915, Chap. 176, 38 Stat. 1196, and the Second Cummins Amendment, Act of August 9, 1916, Chap. 301, 39 Stat. 441, 49 U.S.C. §20(11). Motor common (but not contract) carriers were brought within the coverage of this section of Part I of the Interstate Commerce Act by Section 219 of the Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act), 49 U.S.C. §319.[1]

The complete text is printed at A53. Its parts which are pertinent here are set out in the opinion of the Court of Appeals at A31. In paraphrase, the Carmack Amendment imposes upon any interstate common carrier virtual absolute liability for the full actual loss or damage to

1. These cases arose before the Interstate Commerce Act was revised and recodified *without substantive change* by the Revised Interstate Commerce Act of October 17, 1978, 49 U.S.C. §§10101-11916 (A60) which was then amended by the Motor Carrier Act of 1980, *infra*.

its cargo[2]. The Cummins Amendment prohibits the carrier from attempting to limit its liability or the amount of the damages and declares any such attempt, without respect to manner or form, to be unlawful and void[3]. The Second Cummins Amendment added the proviso containing the two exceptions to Cummins' general proscription of liability limitation: first, in the case of baggage carried on passenger trains and second, in the case where the Interstate Commerce Commission, by express order, authorizes the carrier to file tariffs containing rates based upon the declared or released value of the goods[4]. The tariffs are also required to contain a specific reference to the released rates order[5] and the declaration or released value of the goods must be declared in writing by the shipper or agreed upon in writing.[6]

The Second Cummins proviso of the Carmack Amendment limits to two in number the exceptions to the Amendment's prohibition of the common carrier's attempt to limit its liability for property damage or loss. It does not exempt from the Amendment's proscriptive provisions, nor, for that matter, does it make any reference to, a common carrier when transporting household goods on bills of lading issued by one of the armed services. Nevertheless, the decision below holds that under such circumstances a carrier's limitation of its liability to 60 cents per pound per article is lawful and valid despite the provisions of the statute, even though it is undisputed that the governing tariff was not filed in

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2. Now 49 U.S.C. §11707(a)(1) (1978) (A66).

3. Now 49 U.S.C. §11707(c)(1) (1978) (A67).

4. Now 49 U.S.C. §11707(c)(3) (1978) as to baggage carried by railroads (A67) and 49 U.S.C. §10730 (1978) as to other property (A62). The latter section was further amended by Section 12 of the Motor Carrier Act of 1980, *infra*, to repeal the requirement that the Interstate Commerce Commission must authorize limitations of liability, *except for shipments of household goods*, see *infra*, pp. 16-17.

5. Now 49 U.S.C. §10730(a) (1980) (A73).

6. Now 49 U.S.C. §10730(b)(1) (1980) (A73).

compliance with an order of the Interstate Commerce Commission expressly authorizing rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property.

The Department of Defense is the nation's single largest shipper of household goods. *Practices of Motor Common Carriers of Household Goods*, 95 M.C.C. 138, 145 (1964). In 1960, the Department ordered 510,600 shipments, *ibid.* In Fiscal 1981 it anticipates that it will arrange for 459,681 shipments at an expenditure of $1,004,179,000.[7] Therefore, the decision below has the effect of exempting the major portion of the business of household goods common carriers and the largest class of claimants for damage or loss to their personal effects, *id.* at 141, from the operation of the statute by which Congress intended to impose a nationally uniform policy governing interstate carriers' liability for property loss, *New York, N.H. & H.R.R. Co. v. Nothnagle*, 346 U.S. 128 (1953), a uniformity of application which is essential in a regulated transportation industry. *Strickland Transportation Co. v. United States*, 334 F. 2d 172 (5th Cir., 1964).

The decision is not consonant with the rule of statutory construction affirmed by this Court in the recent case of *United States v. Rutherford*, 442 U.S. 544, 555 (1979), which held that "[o]nly when a literal construction of a statute yields results so manifestly unreasonable that they could not fairly be attributed to congressional design will an exception to statutory language be judicially implied." Also see note 11.

It is in conflict with all the decisions of this Court involving the construction of the provisions of the Carmack Amendment. In *New York, N.H. & H. R.R. Co.*

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7. Compiled from "Justification of Estimates For FY 1981" submitted to Congress with the proposed budget by the Departments of the Army, Air Force and Navy and the U.S. Marine Corps, January, 1980 (A76-79).

v. Nothnagle, supra, this Court held that the Second Cummins proviso exempting "baggage carried on railroads" from the Carmack Amendment's prohibition of liability limitation agreements cannot be extended to baggage carried by a redcap service for which a separate charge is made. ("Clearly that limitation of liability is voided by the Act unless saved by the statutory proviso." *Id.* at 134.) In *Southwestern Sugar & Molasses Co., Inc. v. River Terminals Corp.*, 360 U.S. 411, 420 n. 9 (1959), the Court held that when Congress has declared by statute the circumstances under which carriers may contract for release from or limitation of liability, or rules governing the liability or exemption from liability, no agreement in derogation from them, even if embodied in a tariff, is valid.

In *Adams Express Co. v. Darden*, 265 U.S. 265 (1924), the Court emphasized its refusal to accomodate any implied exception whatsoever to the imposition of virtual insurer's liability. There the carrier argued that if the rates were based upon the released value of the goods and the limitation were then found to be ineffective, the shipper would, in effect, be the beneficiary of preferential treatment in that he was charged a lower rate for full liability while the other shippers were paying the same rate for limited liability. This, the carrier argued, was a discriminatory practice which the Interstate Commerce Act denounces as unlawful and, therefore, if the Court imposed full liability on the carrier it would be aiding the shipper in enforcing rights arising out of an illegal transaction.

The Court, speaking through Mr. Justice Brandeis, said:

> "The short answer to this, and to the company's other arguments, is furnished by the comprehensive terms of the statute. From them appears the intention of Congress to make the carrier liable for the full actual loss, regardless of any agreement or representation of the shipper. Its purpose is so accu-

rately stated that discussion could not make it clearer. It might confuse." *Id.* at 268.

In none of the household goods' shipments from which the twelve cases here devolve was the governing tariff filed pursuant to the authority of a released rates order issued by the Interstate Commerce Commission in accordance with the Second Cummins proviso's rules for the effective limitation of the carrier's liability. Therefore, the decision below conflicts with those decisions in which this Court and the other Courts of Appeals felt impelled to point out that a carrier must affirmatively establish, or the record must presume, that the shipment was governed by a tariff filed in compliance with the Commission's released rates order before the carrier may invoke the defense to the claim for cargo loss that it had lawfully limited its liability: *New York, N.H. & H. R.R. Co. v. Nothnagle, supra; American Ry. Express Co. v. Lindenburg*, 260 U.S. 584 (1923). ". . . for, if petitioner was not duly authorized by the Commission, its action in attempting to limit its liability was unlawful." *Id.* at 588-89; *Anton v. Greyhound Van Lines, Inc.*, 591 F.2d 103 (1st Cir. 1978); *Caten v. Salt City Movers*, 149 F.2d 428 (2nd Cir. 1945); *Chandler v. Aero Mayflower Transit Co., Inc.*, 374 F.2d 129 (4th Cir. 1967); *Ft. Worth & Denver Ry. Co. v. United States*, 242 F.2d 702 (5th Cir. 1957); *Strickland Transportation Co. v. United States, supra; Glickfield v. Howard Van Lines, Inc.*, 213 F.2d 723 (9th Cir. 1954); *Zimmerman v. Allied Van Lines, Inc.*, 317 F.2d 72 (9th Cir. 1963).

2. *The Court Below and the First Circuit Have Entered Contradictory Judgments Based upon Essentially Identical Facts in a Matter Involving a Substantial Federal Question.*

Common to all the cases of which this petition seeks review is the failure of the carriers to file the governing tariffs under the authority of a released rates order of the

Interstate Commerce Commission so as to comply with that requirement of the Second Cummins proviso of the Carmack Amendment. In three of the cases, the carriers also failed to comply with another requirement: that "the value (be) declared in writing by the shipper or agreed upon in writing as the released value of the property." 49 U.S.C. §20(11)

Anton v. Greyhound Van Lines, Inc., supra, decided by the First Circuit on December 21, 1978, also involved a claim by an Air Force officer for damage to her household goods shipped by motor common carrier on a government bill of lading under Government and Military Rate Tariff No. 1-F, which contained rates purportedly based on a 60 cents per pound per article valuation. The bill of lading contained the following clause, "household goods released at a valuation of ____ cents per pound per article." (*Id.* at 105.) The First Circuit held that *the extent of Greyhound's liability was controlled by the Carmack Amendment* and that a "(l)imitation of liability can be effected only when in compliance with an ICC 'order authorizing special rates dependent upon either a declaration of value by the shipper *in writing* or a released value *in writing*' " (*Id.* at 107) (emphasis in original). Since the declared or agreed value of the goods had not been inserted in the blanks, the carrier had not complied with the requirement that the value be in writing. The limitation of liability was, therefore, ineffective and the carrier was liable for the full actual loss.

In three of the cases which are joined in this petition: *James R. Faris v. Aero Mayflower Co., Inc. v. United States of America, Third-Party Defendant — United States Automobile Association, Petitioner; Norman R. Foley, Petitioner v. American Red Ball Transit Co., Inc.; and Glenn D. Wilkerson, Petitioner v. Engel Van Lines, Inc. v. United States of America*, the circumstances are identical to those in *Anton v. Greyhound Van Lines, Inc.* None of the bills of lading (A80-82) make any reference whatsoever to a declared value or re-

leased value or even to any intention to ship on any limitation of carrier liability.[8]

Therefore, there is an irreconcilable conflict between the First Circuit's decision in *Anton v. Greyhound Van Lines, Inc.*, and these three cases since the gravaman of *Anton* was the absence of any writing as to a released value in a shipment of household goods on a government bill of lading. The conflict between *Anton* and all the cases included in this petition is also irreconcilable since in none of these cases was the governing tariff sanctioned by an Interstate Commerce Commission released rates order and the basis of the decision in *Aton* was the First Circuit's conclusion:

> "[A]rrangements limiting liability on the part of interstate carriers is a carefully defined exception to the general thrust of Section 20(11) of the Interstate Commerce Act placing on the carrier absolute liability for loss or damage of a shipper's goods. Consequently, such arrangements must be carefully scrutinized and where they fail, as in the present case, to fully comply with the provisions of the Carmack Amendment, it is clear they are ineffective to limit a carrier's liability." *Id.* at 109.

3. *The Decision below Holding that the Provisions of 49 U.S.C. §20(11) Do Not Control the Matter of the Common Carrier's Liability for Cargo Loss on Government Shipments Conflicts with the Decisions of this Court and Other Courts of Appeals.*

The thrust of the decision below is that Section 22 of the Interstate Commerce Act, 49 U.S.C. §22, supercedes the provisions of the Carmack Amendment, Section 20(11) of the Act, to the extent that the latter does not control the matter of the liability of common carriers when the shipper is the United States.

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8. The requirement that the declaration or agreement be *in writing* is retained in the Motor Carrier Act of 1980, 49 U.S.C. §10730(b)(1) (1980) (A73).

Section 22 of the Interstate Commerce Act of 1887, as amended, authorizes the carrier to transport property free or at reduced rates for the United States and State, or municipal governments, to and from fairs and expositions, or for charitable purposes. In the view of the Court below, this section empowers common carriers who are made subject to the provisions of 49 U.S.C. §20(11) by Section 219 of the Motor Carrier Act of 1935, 49 U.S.C. §319, to limit their liability for government carriage without the necessity of complying with the Second Cummins proviso conditions of Section 20(11). Section 22 is silent as to the matter of the liability of the carrier for cargo loss or damage.[9] On the other hand, Section 20(11) deals exclusively with this matter and expressly provides for the limitation of the carrier's liability on the specific condition that the transportation of the goods be on rates based on declared or agreed values. Accordingly, the decision of the Court below conflicts with the decision of this Court in *Fourco Glass Co. v. Transmirra Products Corp.* 353 U.S. 222 (1957), where it was held that however inclusive may be the general language of the statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment.

When the Court below held that Section 22 empowered the carrier to limit its liability, the decision conflicted with that of this Court in *Pennsylvania R.R. Co. v. Hughes*, 191 U.S. 477 (1903), where it found that the Interstate Commerce Act, containing the antecedent of the present Section 22 (A34), was enacted in 1887 as an expression of Congress' intent to prevent discrimination as to services and rates and that it was not intended to deal with matters involving carrier liability for lost or damaged goods.

Petitioners' position here is also supported by dicta in *Adams Express Co. v. Croninger*, 226 U.S. 491, 507

9. Section 22 was re-enacted without substantive change in 49 U.S.C. §10721 (1978) without reference to the right of the carrier to limit its liability for property loss (A60).

(1913), where this Court held that Section 22 of the Act of 1887 was evidently only intended to continue in existence such other rights or remedies for the redress of some specific wrong or injury, whether given by the Interstate Commerce Act or common law, *not inconsistent with* the rules and regulations prescribed by the provisions of the Act.

It would seem, also, that the decision below cannot be reconciled with the decision in *Hollerbach v. United States*, 233 U.S. 165 (1914), where it was held that the construction and interpretation of government contracts are as in the case of contracts between individuals or that in *St. Louis, B. & M. Ry. Co. v. United States*, 268 U.S. 169, 173 (1925), where the Court said:

> "In respect to furnishing transportation, a railroad ordinarily bears to the government the same relation that it does to a private person using its facilities."

The basis of the decision of the Third Circuit Court of Appeals is its view that the provisions of 49 U.S.C. §20(11) do not control the matter of liability for cargo loss when a common carrier is transporting goods on government bills of lading. Therefore, it conflicts directly with decisions of the Courts of Appeals for the First, Fifth and Eighth Circuits: *Anton v. Greyhound Van Lines, Inc., supra; Ft. Worth & Denver Ry. Co. v. United States, supra; Strickland Transportation Co. v. United States, supra;* and *Rocky Ford Moving Vans, Inc. v. United States*, 501 F.2d 1369 (8th Cir. 1974).

Both *Anton v. Greyhound Van Lines, Inc.* and *Rocky Ford Moving Vans, Inc. v. United States* involved shipments of the household goods of Air Force officers on government bills of lading. In the former, the First Circuit held the carrier liable for the full actual loss to the goods because it had not complied with the conditions of the Second Cummins proviso of Section 20(11). In the latter, the Eighth Circuit held that the carrier had

effectively limited its liability in accordance with the requirements of the statute.

In *Ft. Worth & Denver Ry. Co. v. United States*, the Fifth Circuit specifically pointed out that 49 U.S.C. §22 is a rate section authorizing free or reduced rates for the United States while 49 U.S.C. §20(11) is the section applicable to the measure of damages for loss of or damage to goods. 242 F.2d at 703.

4. The Court below Did Not Consider the Position of the Interstate Commerce Commission or the Terms of the Governing Tariff

The decision of the Court below did not consider the position of the Interstate Commerce Commission on the issue as to whether the liability of household goods common carriers are subject to Commission regulation, although it was called to the Court's attention.

The Interstate Commerce Commission has taken the position that common carrier's liability for loss or damage to household goods shipped by the Department of Defense is subject to Commission regulation. *Practices of Motor Common Carriers of Household Goods, supra*, 7.

In *Southwestern Sugar and Molasses Co. v. River Terminals Corporation, supra*, this Court held that even though the issue in a case is one that appears to be for judicial rather than administrative resolution, agencies created by Congress for regulating the subject matter should not be passed over, particularly when economic factors are involved. Obviously such economic factors are involved in cases such as those here when the rates are required to be proportioned to the amount of the risk. *Adams Express Co. v. Croninger, supra* at 509-10.

This matter is particularly appropriate for both judicial and Interstate Commerce Commission resolution since the terms of the governing tariff refer to the measure of the carrier's liability.

Although the opinion supporting the judgment of the Court below is silent in this regard, it was argued and the record shows that the terms and conditions of Government and Military Rate Tender No. 1-H, effective May 1, 1976, which was stipulated to be the tariff governing the damaged shipment, brought the matter of the carrier's liability within the provisions of the Carmack Amendment. Item 1 of the tariff states:

> "The carrier accepts property for shipment on the government bill of lading under the following terms and conditions:
>
> > "(a) Carrier's legal liability for loss or damage to goods will be the same as set forth in the Interstate Commerce Act (Title 49, U.S.C. §20(11)), limited to the amount per pound per article (See Note) shown herein." (A83)

The identical provision appears in Government Rate Tender I.C.C. No. 1-Y, May 1, 1977 the governing tariff in those shipments here to which MRT No. 1-H did not apply. (A84)

5. *The Decision below Impairs the Uniformity of Application of the Law Governing the Operations of Interstate Common Carriers.*

For the first time in the 74 years since Congress enacted into law what was expected to be the uniform policy regarding the liability of the nation's railroads for cargo loss and in the 45 years since that policy was applied to interstate common carriers by motor vehicle, a court has exempted from the ambit of that policy certain common carriers when enaged in the transportation of goods at the behest of a particular shipper.

With this decision the Third Circuit Court of Appeals has caused the measure of the liability of interstate common carriers for loss or damage to the household goods of servicemen and women to be dependent upon the circuit in which suit is brought.

POINT 2

The Legislative Intent as to Interstate Commerce Commission Regulation of Government Shipments of Household Goods Is Revealed in the Motor Carrier Act of 1980 To Be Contrary to that Found by the Court of Appeals.

The basis of the decision below is the Court's view as to the intent of Congress in the enactment of Sections 20(11) and 22 of the Interstate Commerce Act. In essence, the Court concluded that Congress did not intend to include in the Act's regulatory design, which requires Interstate Commerce Commission authorization before common carriers may limit their liability, the transportation of household goods for the government because the government, as the shipper, had sufficient strength to reach a fair bargain (A51).

In arriving at its conclusion, the Court was impelled to resort to such diverse sources and analogies as the Act of June 15, 1866 which dealt with the special relationship of the *railroads* (but not *motor* common carriers) and the government under the land grant statute (A36-37) as well as the Senate report accompanying a bill which was not enacted into law (A41-42).

The Court's decision was filed on May 9, 1980. Therefore, the Court did not have the benefit of the legislative intent in regard to the main issue of these cases as was subsequently revealed in the provisions of the Motor Carrier Act of 1980, P.L. 96-____, July 1, 1980, ____ Stat. ____.[10]

In the 1980 Act, the latest amendment in the successive generations of the carrier legislation appearing in Title 49, United States Code—Transportation, Congress has taken specific note of the transportation of

10. Since the statute was enacted more than 14 days after the entry of the judgment of the Court of Appeals, petitioners were barred from filing a petition for rehearing by Rule of Appellate Procedure 40 (A75).

household goods by motor common carrier for the government. Section 5(b)(4)(c) exempts from the new motor carrier entry policy " . . . transportation for the United States government of property *other than used household goods* . . ." (A70) (emphasis added). Clearly, Congress intended that common carriers transporting used household goods for the United States government are to be subject to the same rules as are other carriers.

Section 12 amends 49 U.S.C. §10730, the recodification of the second Cummins proviso in the revised Act of 1978, by repealing the provisions which require that carriers may legally limit their liability only when so authorized by the Interstate Commerce Commission, but leaving specifically, as the sole exception to the repeal, "a motor common carrier of household goods." (A73)

Since Section 2 announces that it is the purpose of the Act to reduce unnecessary regulation by the Federal Government (A68), the conclusion is inescapable that when the Act retained the requirement of Interstate Commerce Commission authority for the limitation of the liability of motor common carriers of household goods without exception, limitation or qualification, while excluding "any other motor common carrier of property" from such regulation, it indicated that Congress does not consider the Commission's oversight of the liability of household goods carriers for lost or damaged cargo to be unnecessary regulation, even when the shipment is at government expense.[11]

By singling out household goods carriers from all others, Congress is expressing its concern for this aspect of the transportation business in 1980, just as the Interstate Commerce Commission expressed its concern in 1964 when it found that 24 percent of all shipments of

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11. "Exceptions to clearly delineated statutes will be implied only when essential to prevent 'absurd results' or consequences obviously at variance with the policy of the enactment as a whole"; *United States vs. Rutherford, supra,* at 552.

household goods resulted in claims for loss or damage, *Practices of Motor Common Carriers of Household Goods, supra,* at 166, and that complaints against household goods carriers outnumbered those against all other carriers combined. *Id.* at 141.

Accordingly, Petitioners urge the review of the decision of the Court of Appeals to consider the materiality of the Act's revelation of the legislative intent and its "explicit direction (to the Interstate Commerce Commission) for the regulation of the motor carrier industry and well-defined parameters within which it may act pursuant to Congressional policy." Section 3(a), Motor Carrier Act of 1980 (A74).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that a Writ of Certiorari should be issued to review the judgment order of the United States Court of Appeals for the Third Circuit.

Leonard S. Wissow
Counsel for Petitioners

Appendix

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action 78-1717

DONALD D. HOWE *v.* ALLIED VAN LINES

Philadelphia, Pennsylvania
March 29, 1979

Before: HON. DONALD W. VanARTSDALEN, J

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COURT: In this case I will make as findings of fact the stipulations of fact that have been filed.

I have read and examined all of the briefs, I think with some care, and have heard the arguments of counsel.

It seems to me that his question really boils down to a determination of the application of the two sections of Title 49, being Section 2011 and Section 22, as well as perhaps a consideration of the factual background upon which these parties entered into the commercial arrangements that occurred.

I am sure that any decision that I make, regardless of what that decision is, will be ultimately appealed by one side or the other. I think, therefore, that it is unnecessary to go into a long explanation as to my reasons for the decision that I am going to make.

I conclude that the provisions limiting the defendants liability under this contract shipment to sixty cents per pound, per article, those conditions are valid and enforceable and base this primarily on Section 22.

Therefore, I will grant the defendant's motion for summary judgment and deny plaintiff's corresponding motion for partial summary judgment.

It's clear in this case that the defendant is liable and the only question before the Court on the ultimate issue is the extent of the liability, that is to say, whether the defendant is liable for the full value of the plaintiff's destroyed household goods, or for sixty cents per pound, or as was argued in some of the briefs, possibly as a third alternative, of a dollar twenty-five cents per pound, I believe.

The limitation of the liability was an expressed term of the contract between the shipper and the carrier and therefore it seems to me that the question really boils down to whether the parties, in so limiting their liability, acted lawfully within the scope of the Congressional enactments governing the conduct of common carriers.

Now as plaintiff points out, Section 2011 clearly prohibits any limitation of liability by common carriers. However, this provision is not without exceptions and of course the basic exception is contained in Section 2011 itself, where it permits limitations of liability that have been expressly approved by the shipper and the I.C.C., as long as the reduced tariff schedule specifically mentions such I.C.C. authorization.

There are certain rather technical requirements to come within the exception of Section 2011.

Now there is a question as to whether or not the carrier, the carriers in this case complied with Section 2011 sufficiently to come within its terms.

There's also another possible exception which we are concerned with, and that is Section 22 which provides, in its relevant portion, that nothing in this chapter shall prevent the carriage, storage or handling of property free or at reduced rates for the United States.

Now as I understand plaintiff's theory concerning Section 22, it is that although Section 22 undoubtedly permits reduced rates, it makes no mention whatsoever of reducing liability, and it therefore cannot be said to authorize corresponding limitations on liability.

Plaintiff argued therefore that even where rates are reduced, pursuant to Section 22, liability must remain permanently constant under Section 2011.

That part of the argument I cannot accept.

It is not clear to me that Section 22's reference to reduced rates was meant to preclude correspondingly reducing liability. The word rates, as used throughout the statute, and tariffs that are filed, that are primarily concerned with rates, include such things as the types of commodity, the areas or distance they are to be shipped, and are of necessity influenced by a multitude of factors, including the extent of liability to which they may be subject.

As I see it, the freedom to reduce rates logically and necessarily implies a freedom to reduce liability in consideration thereof.

If liability would not also be flexible under Section 22, then it would seem to me that the freedom to reduce rates would be an empty privilege in most instances; perhaps attractive to carriers who might be motivated by pure charity or patriotism, which I think certainly was not within the Congressional contemplation or possibly because of anticipated high volume of business. But it does seem to me that the only logical reason for a carrier, from a purely business standpoint, to reduce rates to the United States, would be for the purpose of in some way reducing its liability.

As I see, Section 22 does not in any way refute the view that there is a symbiotic relationship between the rates and liability. It makes no mention, Section 22 makes no mention of liability at all. Moreover, Section 2011, which does specifically deal with liability, I believe supports this view. It addresses liability repeatedly in

terms of the rates that carriers may charge, suggesting that Congress did indeed regard the terms of rates and liability as mutually interdependent.

I agree with the decision of the Comptroller General that there is no language in the Act clearly indicating that Congress intended in any way to limit the government's freedom to contract for its transportation needs and upon such terms and conditions as it deemed appropriate.

Congress has remained deferential to the government in this area — that is indicated, I believe, by a 1957 Senate report which is referred to, I believe, in the briefs as No. 410 at page 1785, which expresses concern for the exigencies of various agencies, especially those related to national defense.

It appears to me therefore that Congress intended, and as stated in United States vs. Well Fargo, at 161 Federal Supplement, I believe that is, 606, at 617, that Section 22 should act to exclude from the operation of the Act the carriage, storage and handling of property free or reduced rates for the United States.

Plaintiff has cited a number of cases to support the contention that Section 22's reduced rates provision did not also permit reduced liability.

None of these cases, as I read them, are directly in point, nor are they particularly helpful in construing the relationship between Sections 2011 and 22 under the facts presented in this case.

Plaintiff suggests that even if Section 22 permits both reduced rates and limited liability for government shipments, the parties ruled out the possibility of limited liability by expressly incorporating Section 2011 into the contract.

Item 1 of the — whether we call it tariff or tender, I might say I think that's a matter of semantics without substantial difference, although counsel apparently think that it may make substantial difference.

Item 1 of MRT-1-H, which I conclude is the effective tariff or tender by the carriers to the government for military transportation provides that carriers' legal liability for loss or damage to goods will be the same as set forth in the Interstate Commerce Act, citing Title 49 U.S.C. at Section 2011, limited to the amount per pound, per article shown herein.

This provision is to me obviously not inconsistent with the desire to limit liability.

Clearly the parties intended that all provisions of Section 2011 should apply, except that liability should be limited as specified.

Plaintiff argues also that to permit limit liability, when the United States is the shipper, would compel the absurd results of permitting carriers to limit their liability against all other shippers specially mentioned in Section 22, such as homeless persons and charitable organizations and so on.

This matter is not presently before me and I will not attempt, at this point, to determine the status of any other parties other than the United States government with respect to the right of carriers to limit their liability.

I believe, however, that the language of Section 22, and Congressional intent behind it leads to the conclusion when the United States is the shipper, carriers may limit their liability in return for charging reduced rates.

In holding that Section 22 authorized reduced liability, as well as reduced rates, I am not reaching the question of whether this contract qualifies for limited liability under the provisions expressly contained in Section 2011.

I believe, however, that the requirements of that proviso have also been met.

As I understand it, there is a release rates authorization referred to, I believe, as MC-505.

MC-505 was expressly referred to in the tariff of the defendant in this case for its commercial customers or commercial rates under 175-C, and the rate tender of

MRT-1-H specifically referred to its tariff 175-C and to its commercial rates.

It seems to me that although the statute does require that the matter be expressly referred to, that so far as the government is concerned, considering that the government is the shipper and that there is not the Congressional concern of two parties not being on equal footing in negotiating such transactions and agreements, that there is a sufficient, specific and express reference to the rates release authorization.

In addition to that, of course, the government-as-shipper and plaintiff have expressly agreed to this limitation of the carriers' liability. And as I pointed out before, it is my view Section 22 gives the government that right and it is primarily based on Section 22.

I don't specifically hold that there has been a fully compliance with Section 2011, but it is my view that there has been sufficient compliance.

Section 2011 appears to embody Congress' rather paternalistic attitude toward shippers who may be in a poor bargaining position or who might, or — and also I would say to prevent the carriers from unilaterally limiting their liability under matters that are the type of contracts of adhesion and that type of thing and Congress, I believe, was of the view that the Interstate Commerce Commission should have strict control over limitations of liability for the purposes of protecting particular types of shippers, namely the ordinary commercial shipper.

I believe that this has been suggested by the Interstate Commerce Commission in the practices of motor common carriers of household goods at 95 M.C.C. 138, in 1968.

The statute would appear to make the Interstate Commerce Commission into a sort of watchdog or guardian shippers against all limitations of liability that have not been specifically approved by the Interstate Commerce Commission.

In the case of an agreement between the United States and the carriers, it seems to me that the parties are certainly of equal bargaining power and Congress' concerns for the ordinary shipper would be entirely different.

It would seem to me that Section 2011's protection is completely unnecessary and would, in fact, if given the interpretation sought by plaintiff, would, in fact, very seriously limit the rights of the government to enter into contracts at prices most favorable to the government.

There have been some cases also that have held that if the shipper is sophisticated and knowledgeable in the area that even though there may be some minor technical violations or lack of full compliance with Section 2011, or even though the agreement may not stricken conform to the requirement of the statute, that nevertheless they would be, the reduced liability would be upheld.

For example, the case of Semi-Metals Incorporated vs. Pinter Brothers at 360 Atlanta 2d 385-(1976). The controlling contractual document in this case was the government's bill of lading which was required by governmental regulations and statues and under the existing tariff.

I think it's clear that the defendants and the government may be regarded as possessing equal bargaining power and the government not only consented to the sixty cents per pound limitation of liability, but actually dictated it in the sense that it required that shipments be made at the lowest possible rate.

It is probable that equitable considerations have little, if any effect, since we are concerned only with the construction of statutes.

But I think it is proper to point out that there certainly was no unfair advantage taken of either the shipper, being the government, or the consignee serviceman.

It is clear from the stipulation of facts that the serviceman was fully aware of the limitation of liability. He was afforded an opportunity to ship at the rates where the liability would not be so limited. And in addition to that, he took advantage of the right to secure additional insurance from an insurance carrier to cover any damage in excess of his liability.

I think to apply Section 2011 to the present case would extend this Section well beyond the class of persons and beyond the type of conduct which Congress was concerned with providing protection.

I think it may be of some significance that there has been a limitation of liability and rates dependent upon the released value of the property for a long period of time within the industry. Both sides have accepted the benefits of this arrangement, government by paying reduced rates and carriers by risking proportionately less liability.

I can see no unfairness to either side in permitting this long established and accepted practice to continue.

The plaintiff himself named herein, Donald Howe, was fully protected against loss.

The fact that this is essentially a subrogation claim does little to suggest that the individual serviceman or servicemen require protection of Section 2011, nor do I see any obvious unfairness to the insurance carrier, the real party in interest.

It obviously had actual notice of the limitation of liability contained in the shipping contract.

It had issued policies in the past for profit under similar circumstances.

Thus to the extent that there may be equitable consideration, it is clear that all of them would favor a nonrecovery for the plaintiff in this case based upon an unlimited liability or liability limited only to the value of the goods.

Therefore I conclude that the limitation of liability in exchange for reduced rates is authorized by Section

22 of the United States Code, Section 49, and that this conclusion is supported by the various equitable considerations.

Therefore I will direct that an order be entered in Civil Action No. 78-1717 denying plaintiff's motion for partial summary judgment and granting defendant's motion for summary judgment.

Judgment hereby entered will be in favor of the plaintiff and against the defendant in the sum of $6,438, which is the agreed amount, plus interest on $3,938 from July 5, 1977, and making interest from that date, on that amount, by reason of the fact that there was, according to the stipulation of facts, a tender of the payment of $2,500 on July 7, I believe it was, which was obviously from the stipulation of facts, the day or almost the day that the notice of the actual loss occurred.

Now gentlemen, as to all of the related cases, it seems to me that probably the same basic legal issue is involved. Assuming that there is nothing that would change my view of the law, I think it is rather clear that I would probably rule consistently in all of the other cases.

I will afford counsel for all parties, in all of the other cases, two weeks from today to file any motions for summary judgment either by the plaintiffs or the defendants in those cases.

It would seem to me that although I will not make a formal order of consolidation in those, that they should all be able to be disposed of, particularly in view of the fact that I would anticipate that there would be an appeal of this case and perhaps all of the appeals could be heard at one time.

MR. WISSOW: Your Honor, your Honor made a finding as to — that MRT-1-H does not contain reference to a release rates order?

THE COURT: The only findings of fact that I am making are those contained in stipulations of fact.

MR. WISSOW: Yes, but the stipulation of fact does not say it in that terms and that was raised — in other words, stipulation of fact present to the —

THE COURT: I think it's not necessary for me to make such a finding of fact because as part of the findings of fact is the MRT-1-H, and that would speak for itself. If there is nothing in there, then there is nothing in there. But my making such a finding would not change what it is.

In other words, it seems to me that that is the record and speaks for itself.

You would be in a position to certainly argue that on appeal.

MR. WISSOW: May I suggest also that we have a stay on the other cases pending the disposition of this particular motion, points on appeal?

THE COURT: No. I think that would be entirely inappropriate. And as I say, the reason I say that is that I think it would, first of all, if we go ahead and decide the other case, and they're appealed at approximately the same time, they can probably be consolidated for appeal in the Court of Appeals, otherwise it would not be decided in this case, would not necessarily be res judicata in the other case.

MR. WISSOW: I suggest that your Honor, because there are three of those related cases that are exactly Anton cases — in other words, they do not have the valuation filled in on the blanks, which was the reason they —

THE COURT: That may be a valid reason for making a different ruling in those cases, in this case, but I see no reason to hold up on the decision.

MR. WISSOW: Two weeks for proper motions?

THE COURT: Yes.

MR. WISSOW: Is your Honor going to issue this as an opinion, formal opinion?

THE COURT: I made my statement and my opinion is there. It's in the record. Anybody that wants to purchase the record may do so from the court reporter.

I will sign the order which I believe — yes, there has been a form of order submitted which I will sign today. Today is the 29th.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-1717

DONALD D. HOWE

v.

ALLIED VAN LINES, INC.

ORDER

AND NOW, this 29th day of March, 1979, after consideration of Plaintiff's Motion for Partial Summary Judgment and Defendant's Motion for Summary Judgment, the briefs and arguments of the parties and of amici curiae, it is hereby ORDERED that Plaintiff's Motion is denied and Defendant's Motion is granted, and judgment is hereby entered for plaintiff against defendant Allied Van Lines, Inc. in the sum of $6,438, plus interest at 6% from July 5, 1977 upon $3,938.

Donald W. VanArtsdalen, *J.*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-1340

JERRY P. HILL

v.

TRANS-AMERICAN VAN SERVICE, INC.

ORDER

It is ORDERED that after a hearing and trial, judgment is entered in favor of the plaintiff, Jerry P. Hill, and against the defendant, Trans-American Van Service, Inc., on the issue of liability, damages being limited to sixty cents ($.60) per pound per article. The parties have agreed that based on such limitation of liability, the damages are Eight Thousand Seven Hundred Fifty-four Dollars ($8,754.00). Judgment is entered in favor of plaintiff, Jerry P. Hill, and against defendant, Trans-American Van Service, Inc. in the sum of Eight Thousand Seven Hundred Fifty-four Dollars ($8,754.00).

By the Court:

Donald W. VanArtsdalen, *Judge*

May 22, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-1341

JAMES R. FARIS

v.

AERO MAYFLOWER TRANSIT CO., INC.

ORDER

It is hereby ORDERED that plaintiff's motion for summary judgment as to liability is granted and defendant's liability is limited to sixty ($.60) cents per pound per article. The parties have agreed that based upon such limitation, plaintiff's damages are $3,800.00. Judgment is entered in favor of plaintiff, James R. Faris, and against defendant, Aero Mayflower Transit Co., Inc. in the sum of Thirty Eight Hundred Dollars ($3,800.00).

By the Court:

Donald W. VanArtsdalen, *Judge*

May 22, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-1342

JAMES H. BILLITER

v.

WHEATON VAN LINES, INC.

ORDER

It is hereby ORDERED that final judgment is entered in favor of the plaintiff, James H. Billiter, and against the defendant, Wheaton Van Lines, Inc. in the sum of One Thousand Seven Hundred Thirty-Five Dollars and Eighty-Six Cents ($1,735.86).

By the Court:

Donald W. VanArtsdalen, *Judge*

May 22, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-1581

DALE A. De FRANK

v.

PYRAMID VAN LINES, INC.

ORDER

It is ORDERED that defendant's motion for a partial summary judgment is GRANTED; defendant's liability is limited to sixty ($.60) cents per pound per article. The parties have agreed that based on the above limitation of liability, plaintiff's damages are Eight Hundred Fifty-one Dollars and Four Cents ($851.04). Judgment is entered in favor of the plaintiff, Dale A. De Frank and against the defendant, Pyramid Van Lines, Inc., in the sum of Eight Hundred Fifty-one Dollars and Four Cents ($851.04).

By the Court:

Donald W. VanArtsdalen, *J.*

May 11, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-1582

NORMAN R. FOLEY

v.

AMERICAN RED BALL TRANSIT CO., INC.

ORDER

AND NOW, this 11th day of May, 1979, an Order having previously been entered in this action granting the Motion of defendant American Red Ball Transit Co., Inc. for Partial Summary Judgment, said Order is hereby MODIFIED and it is hereby ORDERED that judgment be entered in favor of plaintiff Norman R. Foley and against defendant American Red Ball Transit Co., Inc. in the amount of $2993.32.

By the Court:

Donald W. VanArtsdalen, *J.*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-1718

HENRY CEVALLOS

v.

VANPAC CARRIERS, INC.

v.

CLEMMER MOVING & STORAGE, INC.

ORDER

It is hereby ORDERED that final judgment is entered in favor of the plaintiff, Henry Cevallos, and against defendant, Vanpac Carriers, Inc., in the sum of Two Thousand Two Hundred Twenty Dollars ($2,220.00).

By the Court:

Donald W. VanArtsdalen, *J.*

May 22, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-1832

JURY TRIAL DEMANDED

WILLIAM E. BLASE,
Plaintiff

v.

NATIONAL VAN LINES, INC.,
Defendant

v.

UNITED STATES OF AMERICA,
Third Party Defendant

ORDER

A motion having been regularly made by the defendant, National Van Lines, Inc., for a summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure against plaintiff William E. Blase, upon the ground that there is no genuine issue of material fact as to the matters which are the subject of the Motion and that defendant is entitled to judgment against plaintiff as a matter of law.

NOW, upon considering the Motion, together with the briefs of counsel for the parties and due deliberation having been had, it is ORDERED that said Motion be and hereby is GRANTED, and that judgment be and hereby

is entered in favor of defendant National Van Lines, Inc. and against plaintiff William E. Blase, together with costs according to law.

By the Court:

Donald W. VanArtsdalen, *J.*

April 27, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-1834

DONALD E. MADONNA

v.

RICHARDSON TRANSFER & STORAGE CO.

ORDER

It is ORDERED that defendant's motion for partial summary judgment is GRANTED; defendant's liability is limited to sixty ($.60) cents per pound, per article. The parties have agreed that based on the above limitation of liability, plaintiff's damages are Four Thousand Six Hundred and Twenty-five ($4,625.00) Dollars. Judgment is entered in favor of the plaintiff, Donald E. Madonna and against the defendant, Richardson Transfer & Storage Co. in the sum of Four Thousand Six Hundred and Twenty-five ($4,625.00) Dollars.

By the Court:

Donald W. VanArtsdalen, *J.*

May 11, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-2033

GLENN D. WILKERSON,
Plaintiff

v.

ENGEL VAN LINES, INC.
Defendant and
Third-Party Plaintiff

v.

UNITED STATES OF AMERICA
Third-Party Defendant

ORDER

AND NOW, this 27th day of April, 1979, upon consideration of the Motion of Defendant Engel Van Lines, Inc. under Fed. R. Civ. P. 56(d) for Partial Summary Judgment, it is hereby ORDERED that in the event that defendant's liability for plaintiff's loss is established, defendant's liability is not to exceed 60 cents per pound per article, and is to be the lesser of the actual value of the loss incurred or 60 cents per pound per article.

By the Court:

Donald W. VanArtsdalen, *J.*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-2034

JAMES R. ACREBACK

v.

ROCKY FORD MOVING VANS, INC.

ORDER

It is ORDERED that defendant's motion for partial summary judgment is GRANTED; defendant's liability is limited to sixty ($.60) cents per pound per article. The parties have agreed that based on the above limitation of liability, plaintiff's damages are One Thousand Twenty-three ($1,023.00) Dollars. Judgment is entered in favor of the plaintiff, James R. Acreback and against the defendant, Rocky Ford Moving Vans, Inc., in the sum of One Thousand Twenty-three ($1,023.00) Dollars.

By the Court:

Donald W. VanArtsdalen, *J.*

May 11, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 78-914

GEORGE J. MERKLER and
JUNE D. MERKLER

v.

AERO MAYFLOWER TRANSIT CO., INC.
and
UNITED STATES OF AMERICA

ORDER

It is ORDERED that order entered April 27, 1979 granting Aero Mayflower Transit Co., Inc.'s motion for summary judgment and limiting liability of sixty cents ($.60) per pound per article be and is hereby vacated.

By the Court:

Donald W. VanArtsdalen, *J.*

May 29, 1979

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-1857

HOWE, Donald D., *Appellant*

v.

ALLIED VAN LINES, INC.

(D.C. Civil No. 78-1717)

No. 79-1858

HILL, Jerry P., *Appellant*

v.

TRANS-AMERICAN VAN SERVICE, INC.

(D.C. Civil No. 78-1340)

No. 79-1859

Faris, James R.

v.

Aero Mayflower Transit Co., Inc.

v.

UNITED STATES OF AMERICA,
3rd Party Defendant

UNITED SERVICES AUTOMOBILE ASSOCIATION,
Appellant

(D.C. Civil No. 78-1341)

No. 79-1860

BILLITER, JAMES H.
UNITED SERVICES AUTOMOBILE ASSOCIATION

v.

WHEATON VAN LINES, INC.
UNITED SERVICES AUTOMOBILE ASSOCIATION,
Appellant

(D.C. Civil No. 78-1342)

No. 79-1861

DeFrank, Dale

v.

Pyramid Van Lines, Inc.
Dale A. DeFrank, *Appellant*
(D.C. Civil No. 78-1581)

No. 79-1862

FOLEY, NORMAN R., *Appellant*

v.

AMERICAN RED BALL TRANSIT CO., INC.
(D.C. Civil No. 78-1582)

No. 79-1863

CEVALLOS, HENRY, *Appellant*

v.

VANPAC CARRIERS, INC.

v.

CLEMMER MOVING & STORAGE, INC.

(D.C. Civil No. 78-1718)

No. 79-1864

BLASE, WILLIAM E. and UNITED SERVICES AUTOMOBILE ASSOCIATION,
Appellants

v.

NATIONAL VAN LINES, INC.,
Deft. and Third Party Plaintiff

v.

UNITED STATES OF AMERICA,
Third Party Defendant

(D.C. Civil No. 78-1832)

No. 79-1865

MADONNA, DONALD E., *Appellant*

v.

RICHARDSON TRANSFER AND STORAGE CO., INC.

(D.C. Civil No. 78-1834)

No. 79-1866

WILKERSON, GLENN D., *Appellant*

v.

ENGEL VAN LINES, INC.

v.

UNITED STATES OF AMERICA

(D.C. Civil No. 78-2033)

No. 79-1867

JAMES R. ACREBACK
UNITED SERVICES AUTOMOBILE ASSOCIATION

v.

ROCKY FORD MOVING VANS, INC.
UNITED SERVICES AUTOMOBILE ASSOCIATION,
Appellant

(D.C. Civil No. 78-2034)

No. 79-1868

MERKLER, George J. and
MERKLER, June D., *Appellants*

v.

AERO MAYFLOWER TRANSIT CO., INC.

v.

UNITED STATES OF AMERICA

(D.C. Civil No. 78-0914)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Argued: March 18, 1980

Before: ALDISERT and GIBBONS, *Circuit Judges*
and GERRY, *District Judge**

(Opinion Filed: May 9, 1980)

OPINION OF THE COURT

GIBBONS, C.J.

This litigation presents us with twelve related cases which have been consolidated for this appeal. In each case, the nominal appellant is a present or former member of the United States armed forces, and the suit is against a motor van common carrier of household goods for damage to the goods during transit. Although the record in each case does not establish the fact, it is apparent that in each case, the appeal is pressed by the casualty insurer which insured the military plaintiffs against such damage. The insurer asserts a right of subrogation. All the shipments were arranged by the Department of Defense (DOD), and the carrier received the goods on a government bill of lading issued pursuant to a Military Rate Tender No. 1-H, ICC No. 35 (MRT 1-H). At least 1500 common carriers of household goods have made a continuous offer under that tender to the DOD Military Traffic Management Command (MTMC) to

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*Hon. John F. Gerry, United States District Judge for the District of New Jersey, sitting by designation.

carry household goods of service personnel at rates lower than those offered to the general public under tariffs on file with the Interstate Commerce Commission. By the terms of MRT 1-H, and the government and carrier bills of lading issued under its authority, the liability of the common carrier for loss or damage is limited to an amount equal to 60 cents per pound per article. In each case, the serviceman, whose household goods suffered damage while in transit (or his casualty insurer), contends that he should recover the actual value of the destroyed goods instead of 60 cents per pound. That contention depends, in each case, upon the applicability of the Carmack and Cummins Amendments of the Interstate Commerce Act to the carriage of these goods. *See* 49 U.S.C. §20(11) (1976).[1] After cross-motions for summary judgment, the district court concluded that the provision relied upon was not controlling, and that the limitation of liability contracted for by the MTMC protected the carriers. We affirm.

I. FACTUAL BACKGROUND

Although the fact patterns in each of the cases is not identical, for the purposes of our disposition, any such differences are immaterial. For these reasons, we will confine our discussion of the relevant facts to the *Howe* case, which is typical.

Donald Howe, a Lieutenant Commander in the United States Navy, made arrangements for the shipment of his household goods through a representative of MTMC. Under these types of arrangements, the govern-

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1. Congress recently repealed the sections of the Interstate Commerce Act at issue in this case in an Act to revise, codify and enact without substantive change the Interstate Commerce Act as subtitle IV of title 49 United States Code, "Transportation." Act of October 17, 1978, Pub. L. No. 95-473, §1, 92 Stat. 1337. The Act is codified at 49 U.S.C. §§10101-11916 (1978). However, since this case arose before the recodification and was litigated under the prior version, we will also use the earlier sections for ease of presentation.

ment offers shipment at its expense. Howe, as a member of the armed services, is entitled to this transportation benefit by virtue of federal legislation.[2] He applied for the benefit on DOD form 1299, and signed an acknowledgment on DOD Form 1797 that he had been briefed concerning the carrier and its liability. Howe was informed that the carrier's liability would be limited to 60 cents per pound per article, and that the goods would be released by the government on a government bill of lading at that valuation. He was also advised that under a federal statute,[3] he could claim from the United States an amount up to $15,000 for any uninsured loss,[4] and that, if he desired, he could also purchase additional insurance. Howe did purchase additional insurance in the amount of $25,000 from United Services Automobile Association, a private insurance company that specializes in insurance for military personnel.

Allied Van Lines, on April 26, 1977, accepted Howe's household goods under a government bill of lading which designated the United States Naval Academy as the shipper and Howe as the consignee. On July 5, 1977, Allied's van overturned and 10,730 pounds of Howe's belongings were destroyed. Allied contends that under the bill of lading its liability is limited to $6,438.22, while Howe and the insurer contend that Allied is liable for the actual value of the goods, which is estimated to be about $35,000. Howe has received payment from the insurer, and presumably has received or can receive payment from the United States for any difference between the amount received from the insurer and the $6,438 owed by Allied. Thus, it is clear that the major portion of any recovery sought from Allied in excess of $6,438, would be for reimbursement of the insurer. The United States acknowledges that it is bound by

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2. *See* 37 U.S.C. §406 (1976).
3. *See* 31 U.S.C. §§241-243 (1976).
4. *See id.* at §241(b)(1).

the limitation of liability in the government bill of lading, and has no subrogation claim. It contends, as well, that the limitation of liability binds Howe, the consignee, and those in privity with him. The fact pattern of all the cases is similar, although in some of the cases it is possible that the serviceman, as well as the insurer, has an interest in any possible recovery.

II. THE THEORY OF LIABILITY FOR FULL VALUE

The theory of recovery is that the 60 cent per pound limitation of liability in the government bill of lading is illegal and void under section 20(11) of the Interstate Commerce Act, which in relevant part provides:

> Any common carrier . . . receiving property for transportation . . . shall issue a receipt or bill of lading therefor, and [1] shall be liable to the lawful holder thereof for any loss, damage, or injury to such property . . . and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier . . . from the liability imposed; and any such common carrier . . . shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon . . . [2] for the full actual loss, damage, or injury to such property . . . [3] notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading . . . or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void: . . . *Provided, however,* [4] That the provisions hereof respecting liability for full actual loss, . . . notwithstanding any limitation of liability or recovery or representation or agreement or release as

> to value, and declaring any such limitation to be unlawful and void, shall not apply, . . . to property . . . received for transportation concerning which the carrier shall have been or shall be expressly ordered or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property . . .; [5] and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission is empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation.

49 U.S.C. §20(11).

Plaintiff reads section 20(11) as a plain prohibition ([3]) against a limitation of liability for less than full value ([2]) unless the ICC has approved a released value order ([4]) and the carrier has filed an approved tariff schedule reflecting a reduced rate approved by the ICC. It contends that there was no ICC released value order ([4]) approving the 60 cent per pound limitation in MRT 1-H 9, and that there was no filed approved tariff schedule ([5]) establishing a rate for such reduced liability. Since Howe and the other servicemen are lawful holders of the government bills of lading, they and their insurer contend that, under section 20(11), the limitation of value is unlawful and void. If section 20(11) governs, and has not been complied with, the logic of the plaintiff's position seems inescapable.

With respect to the rates charged to the general public, the motor carriers do not contend that they are free to contract for a limited liability based upon an agreed reduced value of goods received. The carriers

agree that under section 20(11) they must obtain a released value order, and file an approved tariff schedule reflecting any rate that is different from that charged to other shippers. They do urge, however, that they substantially complied with section 20(11) because their tender to the government, MRT 1-H, was filed with the ICC. But their primary contention, with which the United States as amicus agrees, is that section 20(11) does not govern their dealings with the government-as-shipper. In support of their argument, both the motor carriers and the United States point to section 22 of the Interstate Commerce Act, which in relevant part provides:

> Nothing in this chapter shall prevent the carriage . . . of property free or at reduced rates for the United States, State or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat. . . .

49 U.S.C. §22 (1976).

The motor carriers and the government contend that section 22 authorizes the United States to enter into agreements with carriers which are otherwise subject to the Interstate Commerce Act, at reduced transportation rates with concommitant limitations of liability. They urge that the freedom of contract which the United States enjoys by virtue of section 22, is an exception to the general antidiscrimination thrust of the Act. And, therefore, since section 20(11) is one of the sections that promotes this antidiscrimination purpose, they are exempted from its requirements.

III. THE INAPPLICABILITY OF SECTION 20(11) TO GOVERNMENT ARRANGEMENTS PURSUANT TO SECTION 22.

For present purposes we accept as correct, without deciding, the plaintiffs' contention that they are "holders" of these government bills of lading and that there-

fore they fall within the terms of the limitation of liability protections in section 20(11). We also assume, arguendo, that the plaintiffs are correct in their contention that strict, not merely substantial compliance with that section is required before a carrier to which it applies can claim the protection of a contractual limitation of liability.[5] However, since the plaintiffs' rights as "holders" are no greater than those of the consignor (United States), to whom the bill of lading was issued, we must first consider the contention that section 20(11) is inapplicable to government bills of lading by virtue of section 22. We conclude that both history and policy support that construction of section 22.

A. *The Background of Section 22*

The language of section 22, quoted above, has been a part of the Interstate Commerce Act from the date of the Act's first passage on February 24, 1887. *See* Act of February 24, 1887, ch. 104, §22, 24 Stat. 387.[6] But its

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5. *See* New York, N.H. & H.R. Co. v. Nothnagle, 346 U.S. 128, 134-35 (1953) (to limit liability in accordance with statutory exception, there must be agreement in writing between shipper and carrier to that effect); American Ry. Express Co. v. Lindenberg, 260 U.S. 584, 589-90 (1923) (Cummins Amendment requires express authorization of ICC to maintain rates dependent upon value declared and agreed to as the released value, but statute does not require signature of shipper); Glickfeld v. Howard Van Lines, 213 F.2d 723, 725 (9th Cir. 1954) (discussing statutory requirement for released values); Caten v. Salt City Movers & Storage Co., 149 F.2d 428, 432 (2d Cir. 1945); Semi-Metals, Inc. v. Pinter Bros., 360 A.2d 385, 387 (N.J. Sup. Ct. 1976) (discussing requirements of section 20(11)).

6. The original version of section 22 states (emphasis added):

> Section 22. That nothing in this act *shall apply* to the carriage, storage, or handling of property, free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to minis-

antecedents are even older. The issue of federal regulation of interstate railroads had been the subject of congressional debate for more than twenty years prior to the Act. The 1887 enactment was the culmination of these debates. Previously, a provision similar to section 22 had been included in other proposed bills[7] on which the Senate and the House had failed to agree.[8]

The unsuccessful proponents of federal railroad regulation were not writing, however, on a clean slate with respect to their attempt to exempt government contracts from the general coverage of the act. The subject had already been addressed in the Act of June 15, 1866, ch. 124, §1, 14 Stat. 66 (1866). This was the first railroad statute passed pursuant to commerce clause powers. It was precipitated by the New Jersey statutory grant of a monopoly to the Camden & Amboy Railroad of the traffic between New York and Philadelphia.[9] The act

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NOTE 6 — *(Continued)*

> ters of religion; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: Provided, that no pending litigation shall in any way be affected by this act.

We note that, in this original version, the first clause states flatly that the act shall not "apply." The later version, instead, uses the word "prevent." *Compare* Act of February 24, 1887, ch. 104, §22, 24 Stat. 387 *with* 49 U.S.C. §22 (1976). Apparently, the wording was changed inadvertently in the Act of March 2, 1889, ch. 382, §4, 25 Stat. 862 (1889).

7. *See* H.R. No. 2546, The Reagan Bill of 1878, §9, 9 Cong. Rec. 93 (1878-79), *reprinted in* L. H. Haney, II A CONGRESSIONAL HISTORY OF RAILWAYS 297 (1908 & 1910) (reprinted two volumes in one by A. Kelly 1968) [hereinafter cited as Haney].

8. *See* Haney, *supra* note 7, at 292.

9. *See id.* at 215-27.

authorized all railroads to carry through traffic and to interconnect with other lines. Congress thus intended to eliminate this monopoly by imposing this interconnection principle on all railroads. The act contained the proviso "[t]hat this act shall not affect any stipulation between the government of the United States and any railroad company for transportation or fares without compensation, nor impair or change the conditions imposed by the terms of any act granting lands to such company. . . ." 14 Stat. 66. This reference to "any act granting lands to any such company" is the key to the understanding of the "shall not apply" language in the original section 22.

Most railroad companies, whether chartered by the states or built pursuant to federal legislation were the recipients of various forms of public support, for which the government sought a quid pro quo of more favorable treatment.[10] This treatment of the railroads was consistent with the earlier treatment of canal companies which received government support.[11] By 1866, the land grant acts stated in fairly specific terms exactly what favorable treatment the government expected. A land grant act in 1866 is particularly illustrative and significant:

> That the grants aforesaid are made upon the condition that the said companies shall keep said railroad . . . in repair and use, and shall at all times transport the mails, . . . for the . . . United States, . . . and that the government shall at all times have the preference in the use of said railroad . . . at fair and reasonable rates . . . not to exceed the rates paid by private parties. . . . And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the property or

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10. *See id.* at 34-38.
11. *See id.* at 34.

> troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by . . . the United States.

Act of July 25, 1866, ch. 242, §5, 14 Stat. 240-41 (1866). Some members of Congress assumed that these conditional land grants provided for exactly what they stated: the government was entitled to free transportation for its property and troops from those railroads which had received the land grants. In 1874, Congress attempted to enforce the free transportation provisions and accordingly prohibited the use of army appropriations to be paid for these expenses. Act of June 16, 1874, ch. 285, 18 Stat. 74. The Supreme Court disagreed with Congress' interpretation of its own legislation, and held in *Atchison, Topeka & S.F. Co. v. United States,* 93 U.S. (3 Otto) 442 (1876), that such statutory provisions applied to tolls, not to transportation charges. The railroads were, by then, sufficiently well-connected in Congress that the decision was not overturned by subsequent legislation. But, Congress did continue to insist that the beneficiaries of its land grants do business with the United States at reduced rates.[12]

Congress was certainly aware in 1887, when it passed the Interstate Commerce Act, of its own statutes that required preferential treatment. Numerous states have also enacted similar preferential legislation.[13] To

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12. *Id.* at 37-38. There were, moreover, numerous statutes dealing with conditions and rates for transportation of the mails. *See, e.g.*, Post Office Act, ch. 335, §§213, 214, 17 Stat. 309 (1872); Act of March 3, 1873, ch. 231, 17 Stat. 559; Act of July 12, 1876, ch. 179, 19 Stat. 79; Act of June 17, 1878, ch. 259, 20 Stat. 142 (1878); Act of Dec. 21, 1878, ch. 10, 20 Stat. 259; Act of March 3, 1879, ch. 180, 20 Stat. 357; Act of March 1, 1881, ch. 96, 21 Stat. 375; *See* Haney, *supra* note 7, at 200-213.

13. For example, railroads in New Jersey are required to carry free of charge state employees who are traveling on state business. *See* N.J. Stat. Ann. §48:12-109 (West Supp. 1978).

understand why it was necessary for Congress to exempt governmental business from coverage of the Interstate Commerce Act, it must be recognized that the primary feature of that Act was to prohibit "any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever. . . ." Interstate Commerce Act of 1887, ch. 104, §3, 24 Stat. 380. Thus if the governmental exception, embodied in section 22, had not been included in the Act, a large number of federal and state statutes providing for preferences or advantages to governmental traffic would have been repealed.

However, the real concerns of the 1887 Congress did not involve governmental traffic. The aforementioned stalemate between the House and the Senate over federal railroad regulation finally came to an end in 1887 with the passage of the Act, because of the coincidental occurence of two events. One was the decision of the Supreme Court in *Wabash St. L. & Pac. Ry. Co. v. Illinois*, 118 U.S. 557 (1886). In that case, the Court held that the 1870 Illinois statute prohibiting discrimination between long haul and short haul shippers was, under the commerce clause, unconstitutional. The other precipitating event was the disclosure of evidence that the Standard Oil Company had conspired with railroads in Western Pennsylvania; it was intended that the railroads would charge higher rates for transportation of Pennsylvania crude to refineries in Pittsburgh than for transportation to Standard's refinery in Cleveland.[14] Further investigation by congressional committees revealed that five leading railroads had been part of a conspiracy to monopolize the petroleum trade. It was the railroad's ability to charge various rates that enabled them to effect anticompetitive policies. In 1887, Congress was

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14. *See* Haney, *supra* note 7, at 286-87.

interested in the elimination of the discrimination in favor of classes of private shippers, and not in the elimination of a longstanding legislative judgment that the government could insist upon such discrimination.

The early history of section 22 compels the conclusion that Congress intended to preserve the federal government's power to bargain with carriers, or to impose upon carriers preferential rates and terms—free of the antidiscrimination prohibitions of the Interstate Commerce Act, and free of regulation by the Commission which the Act created. Subsequent amendments to section 22 do not indicate any intention on the part of Congress to eliminate this right of the federal government to make its own arrangements.

The first several changes in the section consisted of the addition of new classifications for which reduced rates would be allowed—if the carrier decided to offer such rates. For example, the Act of March 2, 1889, ch. 382, §9, 25 Stat. 862, which also changed the wording from "apply" to "prevent", added destitute, homeless and indigent persons, persons from National or State Homes, and soldiers to the list. Similarly, blind persons accompanied by a guide were added to section 22 in the Act of February 26, 1927, ch. 217, 44 Stat. 1247-48, and the reduced rate exception was extended to transportation of property to or from parts of the country with the object of providing relief from earthquakes, floods, fires, and other such disasters. *See* Act of March 4, 1927, ch. 510, §1, 44 Stat. 1446-47. In 1934, an exception was added for improving nationwide housing, as specified by the Commissioner, *see* Act of June 27, 1934, ch. 847, §511, 48 Stat. 264, but was repealed in 1940. *See* Act of September 18, 1940, ch. 722, §3, 54 Stat. 900-901. Other minor changes were made by the 1940 Act. During the intervening years, motor carriers were added to the Act. *See* motor carrier act of August 9, 1935, ch. 498, 49 Stat. 543, 563, seeing eye dogs were subsequently allowed for blind persons, *see* Act of July 5, 1937, ch. 432, 50 Stat.

475, and additional relief for disasters when authorized by the Commission (with or without a hearing). *See* Act of August 25, 1937, 50 Stat. 809.

It wasn't until 1957 that a significant change — relevant to this litigation — was proposed but not adopted. In that year, the Senate Committee on Interstate and Foreign Commerce recommended an amendment to section 22. The bill was directed to the first clause of the act under which the United States, state, and municipal governments were allowed reduced rates. The bill proposed to limit the granting of such rates to times of war or national emergency.

The Senate report on this proposal discusses the various positions of the bill's proponents and opponents. The following excerpts are relevant to Congress' understanding of the scope of the section.

> The Interstate Commerce Commission advocates amendment of section 22 as indicated in this bill on the ground that the reduced rates so obtained have a strong tendency to increase the cost of *regulated* transportation.
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> Leading advocates of repeal are members of the motor carrier industry. . . . It is argued that it is unfair to the commercial shipper to allow the government to move its traffic *without regulation* because under this policy the various levels of government obtain low rates that must be subsidized, or the difference made up by commercial shippers in the form of higher rates to them.
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> . . .
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> The railroads generally contend that as long as *unregulated* means of transportation are available to the government . . . that section 22 should be

> available to the railroads to allow them to compete for government business.
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> . . .
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> The Department of Defense does not favor passage of S. 939. Its representative pointed out . . . that the Department . . . deems it imperative that it continue to *have the means for obtaining quick action on rate adjustments now available under section 22. The usual rate bureau procedure for obtaining such adjustments is considered too slow to meet the Department's needs.*

S. Rep. No. 410 (June 6, 1957), *reprinted in* [1957] U.S. Code Cong. & Ad. News 1782, 1783-84 (emphasis added).

The discussion is, in a large part, a comparison of the commercial regulated traffic with the *unregulated* government transportation. The report presumes that government traffic is unregulated and that the determination of its rates and regulations is not subject to normal ICC procedures. Significantly, the Department of Defense suggested that "section 9 of S. 1457, 85th Congress, be substituted. That section would make rates on government traffic subject to all provisions of the Interstate Commerce Act, including the requirements for filing and public inspecting, except the long-and-short-haul clause and the terms of the act providing for suspension of rates." [1957] U.S. Code Cong. & Ad. News at 1784. This proposal itself indicates that the government at that time was not subject to the other provisions. The Report recommends legislation in lieu of S. 939, which essentially is a compromise between the different proposals urged by various carriers and various government agencies. (The federal agencies could not agree among themselves about S. 939).

The amendment to section 22 that was passed reflects a balancing between the government's need for flexibility, particularly with respect to matters of de-

fense, the carriers desire to repeal the exception, and the need, as the committee saw it, for section 22 quotations to "be made available for public scrutiny. Rates for government traffic, like other business transactions of the government, are, in the absence of compelling reasons to the contrary, best handled in the daylight of complete publicity. Requirement for such action is deemed necessary here." *Id.* at 1786. So, in rejecting the original version of S. 939, a new paragraph was suggested which "would require carriers to submit to the Interstate Commerce Commission copies of section 22 quotations simultaneously with their submittal to the agencies and departments of the United States government. The Commission *would not have any regulatory authority over rates made under section* 22, but would be required to make section 22 tenders or quotations available for public examination." *Id.* (emphasis added).

The 1957 Congressional activity resulted in the requirement that copies of quotations (MRT 1-H) to the United States government be filed with the Interstate Commerce Commission for informational purposes, and open for public inspection. *See* 49 U.S.C. §22(2). Neither the text of the 1957 amendment nor its legislative history suggest any departure by Congress from the decision made in 1887 that the federal government, despite the passage of the Act, remained free to contract with common carriers on its own terms. Indeed, a departure from that policy was expressly rejected in 1957.

Not directly in point, but nevertheless relevant to an understanding of section 22, are the exceptions for certain classes of passengers to the "free pass" prohibition found in section 1(7) of the Act, 49 U.S.C. §1(7).[15] That

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15. Section one states in relevant part:

Free transportation for passengers prohibited; exceptions; penalty. No common carrier subject to the provisions of this chapter, shall, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees, its officers, time inspectors, surgeons, physicials,

section is aimed at prohibiting non-excepted passes because they operate, in effect, as unjust discrimination. The "free pass" prohibition was not enacted by Congress until 1906, but those persons excepted from the "free pass" prohibition are similar to those excepted in section 22. Commentators have noted that the two sections must be cross-referenced[16] because they embody a com-

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NOTE 15 — *(Continued)*

and attorneys at law, and the families of any of the foregoing; to the executive officers, general chairmen, and counsel of employees' organizations are authorized and designated to represent employees in accordance with the provisions of the Railway Labor Act; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail-service employees and persons in charge of the mails when on duty and traveling to and from duty, and all duly accredited agents and officers of the Post Office Department and the Railway Mail Service and post-office inspectors while traveling on official business, upon the exhibition of their credentials; to customs inspectors, and immigration officers; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons:

. . . .

49 U.S.C. §1(7).

16. *See* L. A. Miller, THE LEGISLATIVE EVOLUTION OF THE INTERSTATE COMMERCE ACT 18, 280 (John Byrne & Co. 1930); ICC, INTERSTATE COMMERCE ACTS ANNOTATED, Sen. Doc. No. 166, 70th Cong., 1st Sess. Vol. 3 at 2699.

mon purpose.[17] The correlation between the "reduced" fare and a limitation on liability has been recognized; limitations on carrier liability in free passes made pursuant to the Act have been consistently upheld.[18]

B. *The Background of Section 20(11)*

The plaintiffs acknowledge that section 22 appears to reserve to the federal government the right to contract with common carriers on its own terms. They contend, however, that section 22 has no bearing upon the issue of carrier liability. Apparently, they regard that issue as completely unrelated to section 22 rights, and instead, urge that the matter has been dealt with comprehensively and preemptively in section 20(11).

The evolution of section 20(11) illustrates very different policies than the legislative history of section 22. The first version of section 20(11) was the Carmack Amendment of the Hepburn Act. *See* Act of June 29, 1906 (Hepburn Act), ch. 359 §7, 34 Stat. 595. The Carmack Amendment was Congress' reaction to the decision in *Pennsylvania R.R. Co. v. Hughes*, 191 U.S. 477 (1903).[19] According to the *Hughes* Court, the Interstate Commerce Act of 1877 did not provide any guidance on the issue of carrier liability, and that, instead, state law controlled. However, the 1887 Act had carried forward the carrier interconnection principle which first appeared in the Act of June 15, 1866, ch. 124, §1, 14 Stat.

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17. *See* F. Judson, THE LAW OF INTERSTATE COMMERCE AND ITS FEDERAL REGULATION 294, §179 (J.H. Flood & Co., Chicago, 3d ed. 1916).

18. *See, e.g., Francis v. Southern Pacific Co.*, 333 U.S. 445 (1948); *Charleston & Western Carolina R. Co. v. Thompson*, 234 U.S. 576 (1914); *Boering v. Chesapeake Beach R. Co.*, 193 U.S. (1904); *Northern Pacific R. Co. v. Adams*, 192 U.S. 440 (1904). *See* Judson, *supra* note 17, at 296, §180.

19. *See* C. Miller, THE LEGISLATIVE EVOLUTION OF THE INTERSTATE COMMERCE ACT 257 (1930).

66 (1866). It was for this reason that the *Hughes* case created a problematic situation: the lawful holder of a bill of lading would have to identify and locate the interconnecting carrier actually responsible for the loss. This was often an impossibility.[20] Thus under the Carmack Amendment, and therefore a uniform federal standard, the initial carrier, which issued the bill of lading, was made responsible not only for the damage which it caused but also for any damage caused by an interconnecting carrier.

In *Adams Express Co. v. Croninger*, 226 U.S. 491 (1913), the Court construed the Carmack Amendment to be only an adoption of the common law rule that a common carrier may not contract itself out of liability for negligence. However, under state common law, a carrier could contract for a limited valuation of goods. Thus, the Court held that under state law, which had not been preempted by the Amendment, it was lawful for a carrier to limit its exposure to liability. The *Adams Express* holding introduced the possibility that common carriers could discriminate among shippers by offering reduced rates in exchange for real or imaginary limitations in declared value. In 1915, Congress reacted to this situation, and passed the First Cummins Amendment to the section. *See* Act of March 4, 1915, 38 Stat. 1196. It provided that a carrier could contract to limit liability as to valuation only if the goods were hidden from view by wrapping, boxing, or other means. In such a case, the carrier and the shipper could agree on a declared value, and the shipper could obtain a reduced rate dependent on value, but only if such reduced rates were filed with the Interstate Commerce Commission in advance.

Finally, in 1916, as a result of a Commission construction of the 1915 Amendment,[21] Congress passed

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20. *See* Knorst, INTERSTATE COMMERCE LAW & PRACTICE 89-90 (1953).

21. *See id.* at 104.

the Second Cummins Amendment.[22] The purpose of this amendment was to restore the rule of liability for full value as it had previously existed. The Commission could establish rates which varied with the value of the property declared or agreed upon. A limitation of liability was allowed if expressly authorized by the Commission. These released values were to be filed, as rates were, with the Commission. The Second Cummins Amendment contained all the relevant language of the current section 20(11).[23] As we view the legislative evolution of section 20(11), we discern three aspects. First, Congress in the Carmack Amendment in 1906 federalized, and thus made uniform, the law of common carrier liability in interstate commerce transactions. Next, in the First Cummins Amendment, Congress endorsed one of the aspects of the *Adams Express* interpretation of the Carmack Amendment: a carrier could not contract out of negligence absolutely, but it could contract for a rate reflecting a declared value of the goods shipped. Third, Congress recognized that to allow private parties to contract for special rates based upon declared values would open the door to discrimination. Thus, Congress made such contracts the subject of filed tariffs, and thus of the filed tariff rule.[24] We must decide how each of these aspects bears upon the federal government's pre-existing section 22 power to do business with carriers on its own terms.

The first aspect of section 20(11) is, we think, irrelevant for present purposes. In 1906, Congress probably did not have in mind the protection of the federal gov-

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22. *See* Act of August 9, 1916, ch. 301, 39 Stat. 441.

23. Section 20(11) has been recodified without substantive change at 49 U.S.C. §10730 (1978). *See* note 1 *supra*.

24. Carriers are required to file tariffs and must adhere to those tariffs in order to prevent discrimination. *See* Essential Communications v. American Tel. & Tel., 610 F.2d 1114, 1119-20 (3d Cir. 1979).

ernment from the vagaries of state law, and from carrier contracts that exculpated the carrier from negligence. Congress' basic position was reflected in section 22: the federal government could deal with carriers on whatever terms it bargained for. But, even if we assume that the 1906 legislation was intended to benefit the United States, that aspect of section 20(11) is not in issue. The government bills of lading in this case did not exculpate the carriers from their own negligence, and no one suggests that we should look elsewhere but to federal law.[25]

The second aspect of section 20(11) is equally irrelevant. The First Cummins Amendment endorsed the concept of the *Adams Express* rule that a shipper and a carrier could contract for a limitation on liability tied to the declared value of the goods. The endorsement of this concept neither added to nor subtracted from the pre-existing authority of the federal government, recognized in section 22, to contract in exactly that manner if federal officials so desired.

The third aspect of section 20(11), the requirement that shipper-carrier agreements be made only pursuant to approved filed tariffs, is the only possibly relevant aspect. The question is a narrow one: did Congress, when it brought agreements as to declared value of shipments within the antidiscrimination coverage of the Interstate Commerce Act, intend to modify the longstanding policy that the federal government was not bound by the antidiscrimination principle. There is no evidence of any such intention in 1915, or in 1916, or at any time since.

The plaintiffs contend that section 22 is solely a rate section, while section 20(11) is solely a carrier liability section, and thus each section must govern exclusively on the separate issues. They urge that the federal government is free under section 22 to negotiate for dis-

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25. *Cf. Clearfield Trust Co. v. United States*, 318 U.S. 363, 367 (1943).

criminatory rates, but is bound under section 20(11), like private shippers, by the prohibition against contractual limitations on liability—unless, of course, it has fully complied with the released value exception. But section 20(11) itself recognizes the interrelationship between the declared value of property and the rate charged for carriage. According to that section, a shipper who choses to self-insure for any excess over the declared value is entitled to a reduction in rate, since the carrier is thereby relieved of a portion of the risk that it would otherwise be responsible for. The amount of the reduction must be determined, however, in accordance with an approved filed tariff, in order to prevent favored shippers from using the self-insurance device as a method of exacting rate discriminations. A government shipper, exempted under section 22, who agrees to a declared value, similarly acts as a self-insurer in order to seek a rate concession to relieve the carrier of part of the risk of loss. Thus, since a government shipper may lawfully exact a discriminatory rate, there is no reason to require adherence to the antidiscrimination released value provisions of section 20(11).

C. *Caselaw On Government Bills of Lading*

Few cases have been called to our attention dealing expressly with the applicability of section 20(11) to a government bill of lading. The case which gives the plaintiffs the greatest comfort is *Anton v. Greyhound Van Lines,* 591 F.2d 103 (1st Cir. 1978). On facts similar to those presented here, the court held that a carrier was liable to a serviceperson for full value of goods damaged in transit because it had not complied with the released value requirements of section 20(11). The court mistakenly refers to the military person as the shipper, although it seems clear that the goods were, as here, shipped on a government bill of lading at a declared value of 60 cents per pound pursuant to a general tender to

the DOD. No mention is made in the opinion of section 22, and apparently it was not called to the court's attention. Had it been, we are confident that the result in *Anton* would have been different.

No other cases on which the parties rely are particularly helpful. In *Rocky Ford Moving Lines, Inc. v. United States*, 501 F.2d 1369 (8th Cir. 1974), the court enforced the 60 cent per pound limitation of liability, but did not clearly disclose whether its decision rested upon a section 22 exemption or upon substantial compliance with section 20(11). In *Fort Worth & Denver R.R. Co. v. United States*, 242 F.2d 702 (5th Cir. 1975), the court held that the carrier was liable to the United States for full value because neither the section 22 quotation nor the bill of lading contained a lower declared value. 242 F.2d at 705.

In *C & H. Transp. Co. v. United States*, 436 F.2d 480 (Ct. Cl. 1971), the government argued that the section 22 tender (which contained no released value provision) governed. The carrier contended that the section 22 quotation incorporated by reference the carrier's published tariff regulations and released values. The court held for the government. Although the court recognized that a section 22 rate was exclusive, it did not mention section 20(11).[26]

In a similar context, section 22 quotations were recognized as lawfully published and filed with the commission, although not approved. *See Atchison, Topeka & S.F. R. Co. v. United States*, 572 F.2d 843 (Ct. Cl. 1978). Apparently, the court viewed publication and filing as the only necessary elements for section 22 rates. However, the court did not discuss the applicability of section 20(11).

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26. *Cf. Strickland Transp. Co. v. United States*, 334 F.2d 172 (5th Cir. 1964) (distinction between reduced and released rates under section 20(11) in context of U.S. bill of lading—but section 22 not mentioned).

Finally, plaintiffs rely on dicta in *Hughes Transp. Co. v. United States*, 121 F. Supp. 212 (Ct. Cl. 1954), which was vacated, and summary judgment was granted to the government for other reasons in a subsequent decision.[27] 168 F. Supp. 219 (Ct. Cl. 1958), *cert. denied*, 359 U.S. 968 (1959). To the extent that the *Hughes* opinion tends to support plaintiffs' version of the interaction between sections 20(11) and 22, we find it unpersuasive.

This is, so far as we can tell, the first case which has considered whether the Carmack and Cummins Amendments require Interstate Commerce Commission approval of declared value limitations in government tariffs and bills of lading. As indicated above, we think the government is free to contract for declared value limitations without such approval.

D. *Policy Considerations*

The government's shipment of household goods is a massive operation and is part of a comprehensive compensation plan for the military. *See* 37 U.S.C. §406(b). The government has elected to act as a self-insurer for the excess of value over 60 cents per pound, upon the reasonable belief that by doing so, it will obtain more favorable rate quotations from the common carriers of household goods. It is undisputed that the DOD need not have Interstate Commerce Commission approval for the solicitation and acceptance of tenders for carriage. There is no feasible method to separate the component of a tendered rate reflecting risk of loss from the rest of the tender. Thus, as a practical matter, either all aspects of tenders to the government should be made subject to

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27. The Supreme Court held in *Public Utilities Comm. of Calif. v. United States*, 355 U.S. 534 (1958), that rates for the federal government were not subject to regulation by the states, and therefore the original holding of *Hughes* was incorrect.

the Commission's approval jurisdiction or none should be. Congress chose in 1957 to continue the policy, adopted in 1887, of allowing the federal government to bargain freely for preferential treatment. Moreover, it is not unreasonable to assume that the government, as a shipper, has sufficient strength to reach a fair bargain. In light of the close relationship between rates and declared values, it would be unrealistic to interpret the Act as imposing partial coverage.

IV. JUDGMENT

Our conclusion that section 20(11) does not apply to government bills of lading suffices to sustain the judgment in favor of the defendants for any amounts in excess of 60 cents per pound. That being so, we have no occasion to discuss other contentions advanced in support of that judgment. In eleven cases, No. 79-1857, 79-1858, 79-1859, 79-1860, 79-1861, 79-1862, 79-1863, 79-1864, 79-1865, 79-1867, and 79-1868, the plaintiffs also urge that the court erred in omitting interest from the date of loss to the date of judgment. That point is not fully developed in the brief for the plaintiffs, and is responded to only in the brief filed in No. 79-1857 on behalf of Allied Van Lines.

Allied made a $2500 unconditional tender to Howe on July 7, 1977, which was rejected. It contends that the unconditional tender stopped the running of interest on that amount. We agree. As to the remaining balance, interest was allowed. In the other cases, the briefs fail to offer any information on how the amount of the judgment was calculated. But our examination of the record suggests that in those instances in which judgments were entered in favor of the plaintiff, on the assumption that 60 cents per pound was due, the amount of the judgment was agreed upon. Thus we will affirm the judgments of the district court in all cases.

JUDGMENT

These causes come on to be heard on the records from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on March 18, 1980.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgments of the said District Court, filed: May 3, 1979; May 22, 1979; May 11, 1979; May 22, 1979; April 27, 1979; May 11, 1979; May 11, 1979; May 11, 1979; and June 8, 1979, respectively be and the same are hereby affirmed. Costs taxed against appellants.

Attest:

Thomas F. Quinn, *Clerk*

May 9, 1980

FEDERAL STATUTES

SECTIONS 20(11) and 22 of PART I —
INTERSTATE COMMERCE ACT OF 1887, as amended
49 U.S.C. §20(11) and §22

§20, par. (11). Liability of initial and delivering carrier for loss; limitation of liability; notice and filing of claim. Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company fromorm the liability imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether

such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void: *Provided,* that if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however,* That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and

shall not, so far as relates to values, be held to be a violation of section 10 of this title; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission is empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further*, That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State through or into which the defendant carrier operates a line of railroad: *Provided further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice: *And provided further*, That for the purposes of this paragraph and of paragraph (12) of this section the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: *And provided further*, That the liability imposed by this paragraph shall also apply in the

case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this chapter provided. Feb. 4, 1887, c. 104, Pt. I, §20, 24 Stat. 386; June 29, 1906, c. 3591, §7, 34 Stat. 593; Mar. 4, 1915, c. 176, §1, 38 Stat. 1196; Aug. 9, 1916, c. 301, 39 Stat. 441; Feb. 28, 1920, c. 91, §§ 436-438, 41 Stat. 494; July 3, 1926, c. 761, 44 Stat. 835; Mar. 4, 1927, c. 510, § 3, 44 Stat. 1448; Apr. 23, 1930, c. 208, 46 Stat. 251; Aug. 9, 1935, c. 498, §1, 49 Stat. 543; Sept. 18, 1940, c. 722, Title I, §13(b), 54 Stat. 919.

§ 22. Restrictions; quotations of rates for United States Government

(1) Nothing in this chapter shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this chapter shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of Veterans' Administration facilities or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this chapter shall be construed to prohibit any common carrier from establishing by publication and filing in the manner prescribed in section 6 of this title reduced fares for application to the transportation of (a) personnel of United States armed services or of foreign armed services, when such persons are travel-

ing at their own expense, in uniform of those services, and while on official leave, furlough, or pass; or (b) persons discharged, retired, or released from United States armed services within thirty days prior to the commencement of such transportation and traveling at their own expense to their homes or other prospective places of abode; nothing in this chapter shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the free carriage, storage, or handling by a carrier of the household goods and other personal effects of its own officers or employees when such goods and effects must necessarily be moved from one place to another as a result of a change in the place of employment of such officers or employees while in the service of the carrier, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies; nothing in this chapter shall be construed to prohibit any common carrier from carrying any totally blind person accompanied by a guide or seeing-eye dog or other guide dog specially trained and educated for that purpose or from carrying a disabled person accompanied by an attendant if such person is disabled to the extent of requiring such attendant, at the usual and ordinary fare charged to one person, under such reasonable regulations as may have been established by the carrier: *Provided*, That no pending litigation shall in any way be affected by this chapter: *Provided further*, That nothing in this chapter shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this chapter, shall issue any such joint in-

terchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section 6 of this title; and all the provisions of said section relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares and charges referred to in said section. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section 10 of this title shall apply to any violation of the requirements of this proviso. Nothing in this chapter shall prevent any carrier or carriers subject to this chapter from giving reduced rates for the transportation of property to or from any section of the country with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster, if such reduced rates have first been authorized by order of the Commission (with or without a hearing); but in any such order the Commission shall (1) define such section, (2) specify the period during which such reduced rates are to remain in effect, and (3) clearly define the class or classes of persons entitled to such reduced rates: *Provided*, That any such order may define the class or classes entitled to such re-

duced rates as being persons designated as being in distress and in need of relief by agents of the United States or any State authorized to assist in relieving the distress caused by any such calamitous visitation or disaster. No carrier subject to the provisions of this chapter shall be deemed to have violated the provisions of such chapter with respect to undue or unreasonable preference or unjust discrimination by reason of the fact that such carrier extends such reduced rates only to the class or classes of persons defined in the order of the Commission authorizing such reduced rates.

(2) All quotations or tenders of rates, fares or charges under paragraph (1) of this section for the transportation, storage, or handling of property or the transportation of persons free or at reduced rates for the United States Government, or any agency or department thereof, including quotations or tenders for retroactive application whether negotiated or renegotiated after the services have been performed, shall be in writing or confirmed in writing and a copy or copies thereof shall be submitted to the Commission by the carrier or carriers offering such tenders or quotations in the manner specified by the Commission and only upon the submittal of such a quotation or tender made pursuant to an agreement approved by the Commission under section 5b or 5c of this title shall the provisions of paragraph (9) of such section 5b or paragraph (8) of such section 5c apply, but said provisions shall continue to apply as to any agreement so approved by the Commission under which any such quotation or tender (a) was made prior to August 31, 1957 or (b) is on or after August 31, 1957 made and for security reasons, as hereinafter provided, is not submitted to the Commission: *Provided*, That nothing in this paragraph shall affect any liability or cause of action which may have accrued prior to August 31, 1957. Submittal of such quotations or tenders to the Commission shall be made concurrently with submittal to the United States Government, or any agency or department

thereof, for whose account the quotations or tenders are offered or for whom the proposed services are to be rendered. Such quotations or tenders shall be preserved by the Commission for public inspection. The provisions of this paragraph requiring submissions to the Commission shall not apply to any quotation or tender which, as indicated by the United States Government, or any agency or department thereof, to any carrier or carriers, involves information the disclosure of which would endanger the national security.

As amended July 27, 1956, c. 759, 70 Stat. 702; Aug. 31, 1957, Pub.L. 85—246, 71 Stat. 564; Sept. 2, 1958, Publ.L. 85—857, §13(a), 72 Stat. 1264; Oct. 19, 1976, Pub.L. 94—555, Title II, §220(n), 90 Stat. 2630

§219 OF MOTOR CARRIER ACT OF 1935 as amended (Part II — INTERSTATE COMMERCE ACT OF 1887, as amended) 49 U.S.C. §319

§319 Application of section 20(11) and (12) of this title to common carriers by motor vehicle

The provisions of section 20(11) and (12) of this title, together with such other provisions of chapter 1 of this title (including penalties) as may be necessary for the enforcement of such provisions, shall apply with respect to common carriers by motor vehicle with like force and effect as in the case of those persons to which such provisions are specifically applicable. Feb. 4, 1887, c. 104, Pt. II, § 219, as added Aug. 9, 1935, c. 498, 49 Stat. 563, and amended May 16, 1942, c. 318, § 3, 56 Stat. 300; Aug. 7, 1942, c. 552, § 1, 56 Stat. 746.

Sections 10721, 10730, 10922 and 11707 of the REVISED INTERSTATE COMMERCE ACT of 1978 49 U.S.C. §10721, §10730, §10922, and §11707

§10721. Governmment traffic

(a)(1) Except as provided in this section, the full applicable commercial rate shall be paid for transportation

for the United States Government by a common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under this subtitle. Section 5 of title 41 does not apply when transportation for the United States Government can be obtained from a common carrier lawfully operating in the area where the transportation will be provided. When prescribing rates for transportation or service by those common carriers, the Commission shall consider increased revenues those carriers receive under this subsection to reflect those increases in appropriate readjustments of their rates.

(2) Paragraph (1) of this subsection does not apply, and the law related to compensation for transportation for the United States Government in effect immediately before September 18, 1940, applies to a rail carrier if that carrier, or its predecessor in interest, received a grant of land from the United States to aid in constructing the railroad it operates but did not file a release with the Secretary of the Interior before September 18, 1941, of claims against the United States Government to, or arising out of, lands that were granted, claimed to have been granted, or claimed should have been granted to that carrier or its predecessor in interest. This paragraph does not require a rail carrier to reconvey to the United States land patented or certified to it or prevent the patent of land that the Secretary of the Interior found was sold by the carrier to an innocent purchaser for value or as preventing the patent of land listed or selected by the carrier and finally approved by the Secretary of the Interior to the extent that issuance of those patents is authorized by law.

(b) (1) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of chapter 105 of this title may transport individuals for the United States Government without charge or at reduced rates. The carriers may

transport custom inspectors and immigration officers without charge. A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title shall provide transportation for the United States Postal Service under chapters 50 and 52 of title 39, and may transport property for the United States Government, a State, or municipal government without charge or at reduced rates.

(2) Unless a carrier is advised by the United States Government that disclosure of a quotation or tender of a rate established under paragraph (1) of this subsection for transportation provided to the United States Government would endanger the national security, the carrier shall file the quoted or tendered rate, including a retroactive rate made after the transportation has been provided, concurrently, with the Commission and the department, agency, or instrumentality of the United States Government for which the quotation or tender was made or for which the proposed transportation is to be provided. A carrier may quote or tender a rate established under an agreement made and approved under section 10706 of this title, but the exemption from the antitrust laws provided by that section applies only when the filing requirements of this paragraph are met.

(c) A different policy, rule of rate making, system of accounting, method of determining costs of transportation, value of property, or rate of return may not be applied to a water carrier owned or controlled by the United States Government than is applied to a water carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title.

Pub.L. 95–473, Oct. 17, 1978, 92 Stat. 1383.

§10730. Rates and liability based on value

The Interstate Commerce Commission may require or authorize a carrier providing transportation or service

subject to its jurisdiction under subchapter I, II, or IV of chapter 105 of this title, to establish rates for transportation of property under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper, or by a written agreement, when that value would be reasonable under the circumstances surrounding the transportation. A rate may be made applicable under this section to livestock only if the livestock is valuable chiefly for breeding, racing, show purposes, or other special uses. A tariff filed with the Commission under subchapter IV of this chapter shall refer specifically to the action of the Commission under this section.

Pub.L. 95–473, Oct 17, 1978, 92 Stat. 1389.

§10922. Certificates of motor and water common carriers

(a) Except as provided in this section 10930(a) of this title, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II or III of chapter 105 of this title as a motor common carrier or water common carrier, respectively, if the Commission finds that—

(1) the person is fit, willing and able—

(A) to provide the transportation to be authorized by the certificate; and

(B) to comply with this subtitle and regulations of the Commission; and

(2) the transportation to be provided under the certificate is or will be required by the present or future public convenience and necessity.

(b) A person must file an application with the Commission for a certificate to provide transportation as a motor common carrier or water common carrier. The

Commission may approve any part of the application or deny the application. The application must—

(1) be under oath;

(2) contain information required by Commission regulations; and

(3) be served on persons designated by the Commission. (c)(1) Subject to section 10927(a) of this title, each certificate issued to a person to provide transportation as a motor common carrier shall specify—

(A) the transportation to be provided by the carrier;

(B) any of the regular routes over which, any of the places between which, and off-route places at which, the carrier may provide transportation; and

(C) if transportation is not over regular routes or between specified places, the area in which the carrier may provide transportation.

(2) Under regulations of the Commission, a motor common carrier may occasionally deviate from the regular routes, or the places specified in the certificate, or both.

(3) If a motor common carrier transports passengers, the Commission may authorize transportation of the passengers only over a regular route and between specified places, except to the extent the carrier is authorized to provide special or charter transportation.

(4) A certificate of a motor common carrier to transport passengers may include authority to transport—

(A) newspapers, baggage of passengers, express, or mail in the same motor vehicle with the passengers; and

(B) baggage of passengers in a separate motor vehicle.

(d) Each certificate issued to a person to provide transportation as a water common carrier shall specify each route over which, and each port between which, the carrier may provide transportation.

(e)(1) A motor common carrier may provide transportation under a certificate only if the carrier complies with conditions the Commission finds are required by public convenience and necessity, including conditions—

(A) on extending routes of the carrier; and

(B) to carry out requirements established by the Commission under this subtitle

(2) The Commission may prescribe necessary conditions under which a water common carrier provides transportation, including conditions on extending routes of the carrier.

(3) The Commission may prescribe conditions when the certificate is issued and at any time thereafter. The Commission may not prescribe a condition preventing—

(A) a motor common carrier or water common carrier from adding to its equipment and facilities or its transportation within the scope of the certificate to satisfy business development and public demand; or

(B) a water common carrier, if the carrier has authority to provide transportation over completed parts of a waterway project authorized under law, from extending its transportation over the uncompleted parts of the project when opened for navigation to satisfy business development and public demand.

(f) A certificate issued under this section does not confer a proprietary or exclusive right to use the public highways or public waterways.

Pub.L. 95-473, Oc. 17, 1978, 92 Stat. 1409.

§11707. Liability of common carriers under receipts and bills of lading

(a)(1) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or IV of chapter 105 of this title shall issue a receipt or bill of lading for property it receives for transportation under this subtitle. That carrier and any other common carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Commission under subchapter I, II or IV are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (1) the receiving carrier, (2) the delivering carrier,or (3) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and applies to property reconsigned or diverted under a tariff filed under subchapter IV of chapter 107 of this title. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. A delivering carrier is deemed to be the carrier performing the line-haul transportaion nearest the destination but does not include a carrier providing only a switching service at the destination.

(2) A freight forwarder is both the receiving and delivering carrier. When a freight forwarder provides service subject to this subtitle and uses a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title to receive property from a consignor, the motor common carrier may execute the bill of lading or shipping receipt for the freight forwarder with its consent. With the consent of the freight forwarder, a motor common carrier may deliver property for a freight forwarder on the freight forwarder's bill of lading, freight bill, or

shipping receipt to the consignee named in it, and receipt for the property may be made on the freight forwarder's delivery receipt.

(b) The carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c)(1) A common carrier may not limit or be exempt from liability imposed under subsection (a) of this section except as provided in this subsection. A limitation of liability or of the amount of recovery or representation or agreement in a receipt, bill of lading, contract, rule, or tariff filed with the Commission in of this section is void.

(2) If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applicable to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

(3) A common carrier of passengers may limit its liability under its passenger rate for loss or injury of baggage carried on passenger trains, boats, or motor vehicles, or on trains, or boats, or moter vehicles carrying passengers.

(4) A common carrier may limit its liability for loss or injury of property transported under section 10730 of this title.

(d) A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is

brought in a district court of the United States is in a judicial district, and if in a State court, is in a State, through which the defendant carrier operates a railroad or route.

(e) A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date that person receives written notice from the carrier that it has disallowed any part of the claim specified in the notice.

Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1453.

MOTOR CARRIER ACT OF 1980

P.L. 96-____, July 1, 1980, ____ Stat. ____

AN ACT

To amend subtitle IV of title 49, United States Code, to provide for more effective regulation of motor carriers of property, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Motor Carrier Act of 1980".

PURPOSE OF THE ACT

Sec. 2 This Act is part of the continuing effort by Congress to reduce unnecessary regulation by the Federal Government.

* * *

MOTOR CARRIER ENTRY POLICY

Sec. 5. (a) Section 10922 of title 49, United States Code, is amended—

(1) in subsection (a) by inserting "of passengers" after "motor common carrier";

(2) by redesignating subsections (b), (c), (d), (e), and (f), and all references thereto, as subsections (c), (d), (e), (f), and (g), respectively; and

(3) by inserting after subsection (a) the following new subsection:

"(b) (1) Except as provided in this section, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of property if the Commission finds—

"(A) that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission; and

"(B) on the basis of evidence presented by persons supporting the issuance of the certificate, that the service proposed will serve a useful public purpose, responsive to a public demand or need;

unless the Commission finds, on the basis of evidence presented by persons objecting to the issuance of a certificate, that the transportation to be authorized by the certificate is inconsistent with the public convenience and necessity.

"(2) In making a finding under paragraph (1) of this subsection, the Commission shall consider and, to the extent applicable, make findings on at least the following:

"(A) the transportation policy of section 10101(a) of this title; and

"(B) the effect of issuance of the certificate on existing carriers, except that the Commission shall

not find diversion of revenue or traffic from an existing carrier to be in and of itself inconsistent with the public convenience and necessity.

"(3) The Commission may not make a finding relating to public convenience and necessity under paragraph (1) of this subsection which is based upon general findings developed in rulemaking proceedings.

"(4) The provisions of paragraph (1) of this subsection (other than subparagraph (A)) shall not apply to applications under this subsection for authority to provide—

"(A) transportation to any community not regularly served by a motor common carrier of property certificated under this section;

"(B) transportation services which will be a direct substitute for abandoned rail service to a community if such abandonment results in such community not having any rail service and if such application is filed within 120 days after such abandonment has been approved by the Commission;

"(C) transportation for the United States Government of property other than used household goods, hazardous or secret materials, and sensitive weapons and munitions;

"(D) transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds; and

"(E) transportation by motor vehicle of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers if—

"(i) such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations; and

"(ii) after issuance of the certificate, such transportation (measured by tonnage) does not exceed, on an annual basis, the transportation provided by the motor vehicle (measured by tonnage) which is exempt from the jurisdiction of the Commission under section 10526(a) (6) of this title and the owner of the motor vehicle certifies to the Commission annually that he is complying with the provisions of this clause and provides to the Commission such information and records as the Commission may require.

"(5) Notwithstanding any other provision of law, any carrier holding authority under paragraph (4) (D) of this subsection operating one or more commercial motor vehicles with a gross vehicle weight rating of 10,000 pounds or more shall be subject to commercial motor vehicle safety regulations promulgated by the Secretary of Transportation pursuant to this title with respect to its entire operations, including the operations of commercial motor vehicles with gross vehicle weight ratings less than 10,000 pounds.

"(6) The Commission shall streamline and simplify, to the maximum extent practicable, the process for issuance of certificates to which the provisions of paragraph (4) (E) of this subsection apply.

"(7) No motor common carrier of property may protest an application to provide transportation filed under this subsection unless—

"(A) (i) it possesses authority to handle, in whole or in part, the traffic for which authority is applied;

"(ii) it is willing and able to provide service that meets the reasonable needs of the shippers involved; and

"(iii) it has performed service within the scope of the application during the previous 12-month period or has, actively in good faith, solicited service within the scope of the application during such period;

"(B) it has pending before the Commission an application filed prior in time to the application being considered for substantially the same traffic; or

"(C) the Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in section 10101(a) of this title.

"(8) No motor contract carrier of property may protest an application to provide transportation filed under this subsection.".

(b) Section 11145 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The Commission shall streamline and simplify, to the maximum extent practicable, the reporting requirements applicable under this subchapter to motor common carriers of property with respect to transportation provided under certificates to which the provisions of section 10922(b)(4)(E) of this title apply and to motor contract carriers of property with respect to transportation provided under permits to which the provisions of section 10923(b)(5) of this title apply."

(c)(1) Section 10762(a)(1) of title 49, United States Code, is amended by striking out the last sentence and inserting in lieu thereof the following: "A motor contract carrier that serves only one shipper and has provided continuous transportation to that shipper for at least one year or a motor carrier of property providing transportation under a certificate to which the provisions of section 10922(b)(4)(E) of this title apply or under a permit to which the provisions of section 10923(b)(5) of this title

apply may file only its minimum rates unless the Commission finds that filing of actual rates is required in the public interest.".

(2) Section 10762 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) The Commission shall streamline and simplify, to the maximum extent practicable, the filing requirements applicable under this section to motor common carriers of property with respect to transportation provided under certificates to which the provisions of section 10922(b)(4)(E) of this title apply and to motor contract carriers of property with respect to transportation provided under permits to which the provisions of section 10923(b)(5) of this title apply.".

* * *

RATES AND LIABILITY BASED ON VALUE

SEC. 12. Section 10730 of title 49, United States Code, is amended by inserting "(a)" before "The Interstate Commerce Commission", by inserting "(including a motor common carrier of household goods but excluding any other motor common carrier of property)" after "authorize a carrier", and by adding at the end thereof the following new subsection.

"(b)(1) Subject to the provisions of paragraph (2) of this subsection, a motor common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may, subject to the provisions of this chapter (including the general tariff requirements of section 10762 of this title), establish rates for the transportation of property (other than household goods) under which the liability of the carrier for such property is limited to a value established by written declaration of the shipper or by written agreement between the carrier and shipper if that value would be reasonable under the circumstances surrounding the transportation.

"(2) Before a carrier may establish a rate for any service under paragraph (1) of this subsection, the Commission may require such carrier to have in effect and keep in effect, during any period such rate is in effect under such paragraph, a rate for such service which does not limit the liability of the carrier.".

CONGRESSIONAL FINDINGS

SEC. 3. (a) The Congress hereby finds that a safe, sound, competitive, and fuel efficient motor carrier system is vital to the maintenance of a strong national economy and a strong national defense; that the statutes governing Federal regulation of the motor carrier industry are outdated and must be revised to reflect the transportation needs and realities of the 1980's; that historically the existing regulatory structure has tended in certain circumstances to inhibit market entry, carrier growth, maximum utilization of equipment and energy resources, and opportunities for minorities and others to enter the trucking industry; that protective regulation has resulted in some operating inefficiencies and some anticompetitive pricing; that in order to reduce the uncertainty felt by the Nation's transportation industry, the Interstate Commerce Commission should be given explicit direction for regulation of the motor carrier industry and well-defined parameters within which it may act pursuant to congressional policy; that the Interstate Commerce Commission should not attempt to go beyond the powers vested in it by the Interstate Commerce Act and other legislation enacted by Congress; and that legislative and resulting changes should be implemented with the least amount of disruption to the transportation system consistent with the scope of the reforms enacted.

(b) The appropriate authorizing committees of Congress shall conduct periodic oversight hearings on the effects of this legislation, no less than annually for the first 5 years following the date of enactment of this Act, to ensure that this Act is being implemented according to congressional intent and purpose.

RULES OF APPELLATE PROCEDURE

Rule 40.

Petition For Rehearing

(a) Time for Filing; Content; Answer; Action by Court if Granted. A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) Form of Petition; Length. The petition shall be in a form prescribed by Rule 32(a), and copies shall be served and filed as prescribed by Rule 31(b) for the service and filing of briefs. Except by permission of the court, a petition for rehearing shall not exceed 10 pages of standard typographic printing or 15 pages of printing by any other process of duplicating or copying.

Extract From
JUSTIFICATION OF ESTIMATES FOR FY 1981
Department of the Army
PERMANENT CHANGE OF STATION TRAVEL
SUMMARY OF REQUIREMENTS BY TYPE OF COSTS
(In Thousands of Dollars)

	FY 1979 Actual		FY 1980 Estimate		FY 1981 Estimate	
Travel of Military Member	540,657	$145,110	571,658	$152,039	544,367	$219,715
Travel of Dependents (Families)	165,044	51,526	163,598	51,014	168,408	57,394
Transportation of Household Goods	—	292,570	—	353,524	—	390,269
m tons — MSC	117,328	(6,570)	117,429	(7,986)	121,198	(9,333)
s tons — MAC	17,472	(18,694)	17,682	(20,530)	17,860	(20,735)
Land Shipments	138,126	(150,942)	139,617	(185,754)	137,275	(202,618)
ITGBL Shipments	57,010	(116,364)	56,811	(139,254)	58,174	(157,583)
Dislocation Allowance	98,818	22,967	96,187	23,927	101,626	25,231
Trailer Allowance	2,688	1,664	2,661	1,647	2,731	1,693
Transportation of POV's	44,728	30,147	45,412	36,967	46,000	42,595
Port Handling Charges		12,379		12,706		13,273
Non-Temporary Storage		20,137		21,517		22,530
Total Obligations		$576,500		$653,341		$772,700
Less: Reimbursements		8,000		9,200		9,800
Total Direct Program		$568,500		$644,141		$762,900

Extract From
JUSTIFICATION OF ESTIMATES FOR FY 1981
Department of the Navy

PERMANENT CHANGE OF STATION TRAVEL
SUMMARY OF REQUIREMENTS BY TYPES OF COSTS
(In Thousands of Dollars)

	1979 Actual		1980 Estimate		1981 Estimate	
Travel of Military Members	303,190	76,090	329,659	86,789	328,707	117,464
Travel of Dependents (Family)	74,090	19,880	80,256	21,525	81,442	23,872
Transportation of Household Goods	—	206,951	—	232,210	—	254,530
m tons — MSC	306,856	(17,433)	328,797	(19,465)	331,405	(22,081)
s tons — MAC	10,863	(13,600)	11,180	(13,428)	11,267	(13,574)
Other Shipments	116,260	(175,918)	122,285	(199,317)	123,532	(218,875)
Dislocation Allowance	53,301	12,000	58,103	14,137	59,463	14,432
Trailer Allowance	602	240	730	289	779	361
Transportation of POV's	15,448	13,819	15,931	15,026	16,111	16,948
Non-Temporary Storage	—	6,376	—	7,468	—	8,109
Port Handling Charges	—	3,431	—	3,808	—	3,951
Total Obligations		338,787		381,252		439,667
Less Reimbursements		2,146		2,400		2,600
Total Direct Obligations		336,641		378,852		437,067

A/ Includes Midshipmen

Extract From
JUSTIFICATION OF ESTIMATES FOR FY 1981
U. S. Marine Corps

PERMANENT CHANGE OF STATION TRAVEL
SUMMARY OF REQUIREMENTS BY TYPES OF COSTS
(In Thousands of Dollars)

	FY 1979 Actual		FY 1980 Estimate		FY 1981 Estimate	
	Number	Amount	Number	Amount	Number	Amount
Travel of Military Member	152,723	$ 43,386	154,136	$ 44,073	146,078	$ 57,618
Travel of Dependents (family)	23,338	5,837	22,081	5,581	22,366	5,925
Transportation of Household Goods	—	44,406	—	47,599	—	53,438
m tons — MSC	28,950	(2,244)	29,443	(2,883)	28,096	(3,150)
s tons — MAC	755	(1,013)	930	(1,379)	885	(1,312)
IGBL Shipments	3,224	(7,929)	3,251	(9,958)	3,181	(11,332)
Land Shipments	22,021	(33,220)	21,099	(33,379)	20,585	(37,644)
Dislocation Allowance	17,968	3,975	17,785	4,372	17,568	4,284
Trailer Allowance	234	211	230	206	225	200
Transportation of POV's	2,437	1,601	2,456	1,955	2,352	2,151
Non-Temporary Storage	—	1,707	—	2,025	—	1,406
Port Handling Charges	56,244	1,382	56,950	1,710	54,438	1,568
Subtotal		102,505		107,521		126,590
Total Obligations		102,505		107,521		126,590
Less Reimbursements		907		1,012		1,012
Total Direct Program		$101,598		$106,509		$125,578

U.S. GOVERNMENT BILL OF LADING

B/L NO. K- 4878324

TRANSPORTATION COMPANY

TENDERED TO → MAYFLOWER MOVING & STORAGE

ROUTE ORDER/RELEASE NO.

STOP THIS CAR OR TRUCK AT

FOR

CAR, TRUCK OR CONTAINER INITIALS AND NO. | KIND

IMPORTANT
Issuing office to send this copy to consignee immediately after surrender of original to initial carrier.

CAR-TRUCK-CONTAINER (Length/Cube)		MARKED CAPACITY †		DATE FURNISHED †	DATE B/L ISSUED
ORDERED	FURNISHED	ORDERED	FURNISHED		
					11/17/76

† Furnish this information in case of carload or truckload shipments only.

RECEIVED BY THE TRANSPORTATION COMPANY NAMED ABOVE, SUBJECT TO CONDITIONS NAMED ON THE REVERSE OF THE ORIGINAL BILL OF LADING, THE PROPERTY HEREINAFTER DESCRIBED, IN APPARENT GOOD ORDER AND CONDITION (CONTENTS AND VALUE UNKNOWN), TO BE FORWARDED TO DESTINATION BY THE SAID COMPANY AND CONNECTING LINES, THERE TO BE DELIVERED IN LIKE GOOD ORDER AND CONDITION TO SAID CONSIGNEE.

FROM

(Shipping point) → Kentfield, California

FULL NAME OF SHIPPER: Ledr. James R. Farris
237 ~~Legal~~ Allistor Ave.
Fem Def

MAY 17 12:1

CONSIGNEE (Name, address and ZIP code)
Ledr. James Richard Farris
Miami, Florida
(NOAA/AOML/MOGGL, Tel. 361-3361 X 314)

MARKS

DESTINATION (Name of installation)
Mayflower Storage Warehouse
Miami, Florida
(Street address) (City) (State or country) (ZIP code)

CHARGES TO BE BILLED TO DEPARTMENT OR AGENCY: NASO Finance Operations
BUREAU OR OFFICE: (NOAA), Lake Union Bldg.,
1700 Westlake Ave., N., Seattle, WA 9810
(Street address) (City) (State or country) (ZIP code)

VIA (Route shipment when advantageous to the Government)

APPROPRIATION CHARGEABLE
A39090/99120230 - 2211

SEAL NOS.

APPLIED BY:

FOR CARRIER'S USE ONLY
WAYBILL NO. OR FREIGHT BILL NO.

CONTRACTORS WILL RETURN UNUSED OR CANCELED BILLS OF LADING TO GOVERNMENT OFFICE FROM WHICH RECEIVED.

PACKAGES NO.	PACKAGES KIND	DESCRIPTION OF ARTICLES (Use carrier's classification or tariff description if possible; otherwise use a clear nontechnical description)	NUMBERS ON PACKAGES	WEIGHTS*	
		HOUSEHOLD GOODS & PERSONAL EFFECTS SIT (Storage in Transit) authorized for 90 days. Packing, Crating & Unpacking authorized. ✓ FC 12/2/76		Approx. 9,500 lbs	Est 4,632.
					USAA SERSO

IF THIS SHIPMENT FULLY LOADS THE CAR OR TRUCK USED, CHECK ☐ YES

TARIFF OR SPECIAL RATE AUTHORITIES (CL, TL, or Vol only)

CARRIER FURNISHED SERVICE AT ORIGIN. ☐ PICKUP ☐ TRACTOR
INITIALS OF SHIPPER'S AGENT

B/L NO. K- 4878324

NAME OF TRANSPORTATION COMPANY

DATE OF RECEIPT OF SHIPMENT 12-7-76

INITIAL CARRIER'S AGENT, BY SIGNATURE BELOW, CERTIFIES HE RECEIVED THE ORIGINAL BILL OF LADING.

SIGNATURE OF AGENT Robert [illegible]

PER

FOR USE OF ISSUING OFFICE

CONTRACT OR PURCHASE ORDER NO. OR OTHER AUTHORITY 26-7-A39-010 DATED

F.O.B. POINT NAMED Miami, Florida

NAME OF ISSUING OFFICER

DATE 11/17/76 Administrative Officer

ISSUING OFFICE NOAA/AOML
15 Rickenbacker Causeway, Miami, FL 331
(Street address) (City) (State or country) (ZIP code)

A80

James R. Faris, Petitioner vs. Aero Mayflower Transit Co., Inc. vs. U.S.A., Third Party Defendant; United Services Automobile Association, Appellant.

TRANSPORTATION COMPANY AMERICAN RED BALL TRANSIT
MIGHT WAY TRANSIT CO.

ROUTE ORDER/RELEASE NO. DOOR TO DOOR CODE 1

CAR-TRUCK-CONTAINER (Length/Cube)	MARKED CAPACITY †		DATE FURNISHED †	DATE B/L ISSUED
	ORDERED	FURNISHED		
† Furnish this information in case of carload or truckload shipments only.				19 Jan 77

TO BE FURNISHED AT

IMPORTANT
Issuing office to send this copy to consignee immediately after surrender of original to initial carrier.

FOR CONTAINER NO.

KIND

RECEIVED BY THE TRANSPORTATION COMPANY NAMED ABOVE, SUBJECT TO CONDITIONS NAMED ON THE REVERSE OF THE ORIGINAL BILL OF LADING, THE PROPERTY HEREINAFTER DESCRIBED, IN APPARENT GOOD ORDER AND CONDITION (CONTENTS AND VALUE UNKNOWN), TO BE FORWARDED TO DESTINATION ON THE SAID COMPANY AND CONNECTING LINES, THERE TO BE DELIVERED IN GOOD ORDER AND CONDITION TO SAID CONSIGNEE.

FROM 6577 HIGHLAND DR. (MOUNTAIN GREEN)
MORGAN, UTAH 84050
(Shipping point) → WT: 18,000

FULL NAME OF SHIPPER
KAFO/TRANSPORTATION OFFICER (DSN)
HILL AFB, UTAH 84405

MARKS
SIT NOT TO EXCEED 90 DAYS AUTHORIZED.
CARRIER WILL CONTACT T.O. KAY/EARLY AFB,
NV 87119 PRIOR TO DEL. OR PLACING IN STORAGE

(Name, address and ZIP code)
FOLEY, NORMAN R., [illegible]/O-4, 554-50-4374, USAF

(Name of installation)

CHARGES TO BE BILLED TO
DEPARTMENT OR AGENCY FINANCE CENTER
BUREAU OR OFFICE TRANSPORTATION DIVISION U.S. ARMY
INDIANAPOLIS IND A6242
(Street address) (City) (State or country) (ZIP code)

(Shipment when advantageous to the Government)

APPROPRIATION CHARGEABLE
5773500 327 5761.01 5503725

FOR CARRIER'S USE ONLY
WAYBILL NO. OR FREIGHT BILL NO.

BY:

CONTRACTORS WILL RETURN UNUSED OR CANCELED BILLS OF LADING TO GOVERNMENT OFFICE FROM WHICH RECEIVED.

ACCS KIND	DESCRIPTION OF ARTICLES (Use carrier's classification or tariff description if possible; otherwise use a clear nontechnical description)	NUMBERS OR PACKAGES	WEIGHTS*	
	HOUSEHOLD GOODS WEIGHT INCLUDES PROFESSIONAL BOOKS, PAPERS & EQUIP. ESTIMATED PICKUP DATE: 21 Jan 77 ESTIMATED DELIVERY DATE: 8 Jul 77 DATE OF DELIVERY INTO SIT: DATE OF DELIVERY INTO RESIDENCE:			

IF THIS SHIPMENT FULLY LOADS THE CAR OR TRUCK USED, CHECK ☐ YES

TARIFF OR SPECIAL RATE AUTHORITIES (CL, TL, or Vol. only)
ICC 1026

CAR FURNISHED AT ORIGIN, BY SHIPPER'S AGENT ☐ PICKUP ☐ TRAP-CAR

B/L NO. M-0667122

FOR USE OF ISSUING OFFICE

CONTRACT OR PURCHASE ORDER NO. OR OTHER AUTHORITY A-1961 DATED 1 Nov 76

F.O.B. POINT NAMED 6577 AFB, UTAH 84406

NAME OF ISSUING OFFICER GORDON C. [illegible]

DATE 19 Jan 77 TITLE USAF T.O.

ISSUING OFFICE HQ OGDEN ALC (DSCRM)
HILL AFB, UTAH OGDEN 84406
(Street address) (City) (State or country) (ZIP code)

TRANSPORTATION

RECEIPT OF SHIPMENT [illegible] AMERICAN RED BALL TRANSIT
THE INITIAL CARRIER'S AGENT, BY SIGNATURE BELOW, CERTIFIES HE RECEIVED THE ORIGINAL BILL OF LADING.

SIGNATURE OF AGENT PER

Norman R. Foley, Petitioner vs. American Red Ball Transit Co., Inc.

181

A82

TRANSPORTATION COMPANY ENGE VA[illegible] INC
TENDERED TO → (BURNHAM VAN SVC INC)

ROUTE ORDER/RELEASE NO. JOM DTD VAN CODE 1

STOP THIS CAR OR TRUCK AT

FOR

CAR, TRUCK OR CONTAINER INITIALS AND NO. | KIND

IMPORTANT
Issuing office to send this copy to consignee immediately after surrender of original to initial carrier.

CAR-TRUCK-CONTAINER (Length/Cube) ORDERED	FURNISHED	MARKED CAPACITY † ORDERED	FURNISHED	DATE FURNISHED †	DATE

† Furnish this information in case of carload or truckload shipments only.

4NO:

RECEIVED BY THE TRANSPORTATION COMPANY NAMED ABOVE, SUBJECT TO CONDITIONS NAMED ON THE REVERSE OF THE ORIGINAL BILL OF LADING, THE PROPERTY HEREINAFTER DESCRIBED, IN APPARENT GOOD ORDER AND CONDITION (CONTENTS AND VALUE UNKNOWN), TO BE FORWARDED TO DESTINATION BY THE SAID COMPANY AND CONNECTING LINES, THERE TO BE DELIVERED IN LIKE GOOD ORDER AND CONDITION TO SAID CONSIGNEE.

FROM 5157 ETON KROR COLUMBUS GA
563 9322, 6419 LBS
(Shipping point) →

FULL NAME OF SHIPPER

CFAT ITO USAIC FT BENNING GA 31

CONSIGNEE (Name, address and ZIP code)
WILKERSON, GLENN D
CPT 03 USA 423 66 8724

HHG PCS, SIT NOT TO EXCEED 90 DAYS AUTH, NO DAYS SIT USED AT ORIGIN.

DESTINATION (Name of installation)
FT LEE VA (PRINCE GEORGE)
(Street address) (City) (State or country) (ZIP code)

CHARGES TO BE BILLED TO
DEPARTMENT OR AGENCY CHIEF, TRANSPORTATION DIVISION
BUREAU OR OFFICE US ARMY FINANCE SUPPORT AGENCY
INDIANAPOLIS, IN.
(Street address) (City) (State or country)

VIA (Route shipment when advantageous to the Government)

SEAL NOS.

APPLIED BY:

FOR CARRIER'S USE ONLY
WAYBILL NO. OR FREIGHT BILL NO.

APPROPRIATION CHARGEABLE
2A08

CONTRACTORS WILL RETURN UNUSED OR CANCELED BILLS OF LADING TO GOVERN FROM WHICH RECEIVED.

PACKAGES NO.	KIND	DESCRIPTION OF ARTICLES (Use carrier's classification or tariff description if possible; otherwise use a clear nontechnical description)	NUMBERS OF PACKAGES	WEIGHTS*	
1	LOT	HHG. WT INCLUDES [illegible] LBS PB, PP&PE	GROSS		
		REQ PICKUP DATE: 15-16NOV77	TARE		
		REQ DLVR DATE:29NOV77	NET		
		DATE OF DLVR INTO SIT:			
		DATE OF DLVR INTO RES:			
		PRIOR TO EFF DLVR TO RES OR PLACING IN STOR,	CARR WILL NTFY		
		ITO AT FT LEE VA TELE: 703 734 1708			
		WT LIMIT: 11000 LBS			
		REQUEST SHIPMT BE REWEIGHED AT DEST			

IF THIS SHIPMENT FULLY LOADS THE CAR OR TRUCK USED, CHECK ☐ YES

TARIFF OR SPECIAL RATE AUTHORITIES (CL, TL, or Vol. only)
GRTIY

CARRIER FURNISHED XXX ☐ PICKUP
SERVICE AT ORIGIN. ☐ TRAP CAR
INITIALS OF SHIPPER'S AGENT

B/L NO. M-2514A35

ENGE VAN LINES INC
(BURNHAM VAN SVC INC)
TRANSPORTATION COMPANY

DATE OF RECEIPT OF SHIPMENT

INITIAL CARRIER'S AGENT, BY SIGNATURE BELOW, CERTIFIES HE RECEIVED THE ORIGINAL BILL OF LADING.

SIGNATURE OF AGENT

PER

FOR USE OF ISSUING OFFICE

CONTRACT OR PURCHASE ORDER NO. OR OTHER AUTHORITY SD 153 91 DATE

F.O.B. POINT NAMED

NAME OF ISSUING OFFICER EUGENE J LARSON

DATE 4NOV77 TITLE MAJ TC ITO

ISSUING OFFICE FT BENNING

(Street address) (City) (State or country)

Glenn D. Wilkerson, Petitioner vs. Engel Van Lines, Inc.
vs. United States of America

Extract From
GOVERNMENT AND MILITARY RATE TENDER NO. 1-H
Effective May 1, 1976

ITEM 1

LIMITATION OF CARRIER LIABILITY

Rates and charges in this tender apply without additional valuation charges when shipment is released to a value of 60 cents per pound per article. Whenever the declared or released value (as provided for in Items 9 and 10 of tariff) of the entire shipment exceeds 60 cents per pound per article, rates herein apply plus valuation charges as provided for in Item 190 of tariff.

The carrier accepts property for shipment on the government bill of lading under the following terms and conditions:

(a) Carrier's legal liability for loss or damage to goods will be the same as set forth in the Interstate Commerce Act (Title 49, USC, Section 20 (11)), limited to the amount per pound, per article (see Note) shown herein.

(b) When the cost of repair, replacement, or actual cash value of the item (less depreciation and salvage) at the time and place of loss or damage is less than the carrier's liability, as provided in paragraph (a), the carrier shall be liable for the lesser amount.

(c) The carrier reserves the right to decline articles prohibited by law or regulatory body or which are injurious or contaminating to the shipment. The carrier shall be liable for loss or damage resulting from nonobservance hereof.

(d) Carrier is not responsible for loss or damage caused by:

1. Act of God, public authority or negligence of the owner, and/or his agent.

2. Hostile or warlike action in the time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack:

   a By any government or sovereign power (de jure or de facto), or by an authority maintaining forces,

   b By any agent or any such government, power, authority or forces,

   c Contamination attributable to effects of radioactive or fissionable materials.

3. Any weapon of war employing atomic fission or radioactive force whether in time of peace or war.

4. Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such occurrence, seizure or destruction under quarantine or Customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

5. Strikes, lockouts, labor disturbances, riots, civil commotion, acts of person or persons taking part in such occurrence or disorder.

6. Inherent vice of the article or infestations by mollusks, arachnids, crustaceans, parasites or other types of pests, fumigation or decontamination when not the fault of the carrier.

7. The burden of proof shall be on the carrier to show that the loss or damage was caused by the excepted conditions which relieve it of liability.

(e) The carrier shall not be liable for intangible property, stamps, coins, bank notes or securities, nor for the intrinsic or sentimental value of an item.

(f) The carrier shall be liable, only to the extent of his stated liability, for small items of extraordinary value such as expensive cameras, watches, jewelry and furs.

(g) The carrier shall not be liable for pre-existing damage indicated on the inventory.

(h) The carrier shall not be liable for damage resulting from improper packing, when such packing was not performed by the carrier.

(i) The carrier shall be liable for concealed damage caused by the carrier, or when any visible damage to the container is noted, or when the entire contents (or a portion thereof) is lost, either while in transit, storage-in-transit, or when delivered by the carrier at destination.

(j) Carrier may, at its option, require proof of loss or damage claimed.

NOTE: Definition of the term Item or Article

All reference to the term item or article in this tender is to be construed as the same.

Each shipping piece or package and contents thereof shall constitute one article. Any article taken apart or knocked down for handling or loading in vehicle shall constitute one article.

On shipments transported in containers, each shipping piece or package, or item not inclosed in packing unit within container, shall constitute one article.

For the sake of clarity, the following examples apply. These examples identify carriers maximum liability. Carriers actual liability will not exceed the actual cost of repairing or replacing any article lost or damaged in each case.

(1) WHEN RELEASED AT 60 CENTS PER POUND PER ARTICLE: Bed assembly, weight 100 pounds - Headboard lost or damaged, weight 50 pounds. Carrier's maximum liability for loss or damage to the headboard would be 60¢ times 100 pounds (weight of total bed assembly) or $60.00.

(2) WHEN RELEASED AT 60 CENTS PER POUND PER ARTICLE: Barrel of dishes, weight 50 pounds - Several dishes broken weighing 2 pounds. Carrier's maximum liability for broken dishes within the barrel would be 60¢ times 50 pounds or $30.00.

(3) WHEN RELEASED AT 60 CENTS PER POUND PER ARTICLE: Carton or package, weight 60 pounds - Fishing reel missing, weight 1 pound. Carrier's maximum liability would be 60¢ times 60 pounds or $36.00.

Extract From
GOVERNMENT RATE TENDER I.C.C. NO. 1-Y
Effective May 1, 1977

(f)

LIMITATION OF CARRIER LIABILITY

Rates and charges in this Tender apply without additional valuation charges when shipment is released to a value of 60 cents per pound per article. Whenever the declared or released value (as provided for in Paragraphs (j) and (k) of Application of Tender) of the entire shipment exceeds 60 cents per pound per article, rates herein apply plus valuation charges as provided for in Item 220 of Tender.

The carrier accepts property for shipment on the Government Bill of Lading under the following terms and conditions:

(A) Carrier's legal liability for loss or damage to goods will be the same as set forth in the Interstate Commerce Act (Title 49, USC, Section 20 (11), limited to the amount per pound, per article (see Note) shown herein.

(B) When the cost of repair, replacement, or actual cash value of the item (less depreciation and salvage) at the time and place of loss or damage is less than the carrier's liability, as provided in Paragraph (a), the carrier shall be liable for the lesser amount.

(C) The carrier reserves the right to decline articles prohibited by law or regulatory body or which are injurious or contaminating to the shipment. The carrier shall be liable for loss or damage resulting from nonobservance hereof.

(D) Carrier is not responsible for loss or damage caused by:

1. Act of God, public authority or negligence of the owner, and/or his agent.
2. Hostile or warlike action in the time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack:
   a By any government or sovereign power (de jure or de facto), or by an authority maintaining forces,
   b By any agent or any such government, power, authority or forces,
   c Contamination attributable to effects of radioactive or fissionable materials.
3. Any weapon of war employing atomic fission or radioactive force whether in time of peace or war.
4. Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such occurrence, seizure or destruction under quarantine or Customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.
5. Strikes, lockouts, labor disturbances, riots, civil commotion, acts of person or persons taking part in such occurrence or disorder.
6. Inherent vice of the article or infestations by mollusks, arachnids, crustaceans, parasites or other types of pests, fumigation or decontamination when not the fault of the carrier.

(f)

LIMITATION OF CARRIER LIABILITY (Continued)

7. The burden of proof shall be on the carrier to show that the loss or damage was caused by the excepted conditions which relieve it of liability.

(E) The carrier shall not be liable for intangible property, stamps, coins, bank notes or securities, nor for the intrinsic or sentimental value of an item.

(F) The carrier shall be liable, only to the extent of his stated liability, for small items of extraordinary value such as expensive cameras, watches, jewelry and furs.

(G) The carrier shall not be liable for pre-existing damage indicated on the inventory.

(H) The carrier shall not be liable for damage resulting from improper packing, when such packing was not performed by the carrier.

(I) The carrier shall be liable for concealed damage caused by the carrier, or when any visible damage to the container is noted, or when the entire contents (or a portion thereof) is lost, either while in transit, storage-in-transit, or when delivered by the carrier at destination.

(J) Carrier may, at its option, require proof of loss or damage claimed.

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On shipments transported in containers, each shipping piece or package, or item not inclosed in packing unit within container, shall constitute one article.

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(2) WHEN RELEASED AT 60 CENTS PER POUND PER ARTICLE: Barrel of dishes, weight 50 pounds - Several dishes broken weighing 2 pounds. Carrier's maximum liability for broken dishes within the barrel would be 60 cents times 50 pounds or $30.00.

(3) WHEN RELEASED AT 60 CENTS PER POUND PER ARTICLE: Carton or package, weight 60 pounds - Fishing reel missing, weight 1 pound. Carrier's maximum liability would be 60 cents times 60 pounds or $36.00.

Supreme Court, U.S.
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No. 80-223

IN THE

Supreme Court of the United States

October Term, 1980

DONALD D. HOWE, et al.,

Petitioners,

v.

ALLIED VAN LINES, INC., et al.,

Respondents

On Petition for a Writ for Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF RESPONDENT ALLIED VAN LINES, INC. IN OPPOSITION TO THE PETITION

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QUESTIONS PRESENTED

1. Did not the Court of Appeals correctly hold that common carriers may limit their liability by written contract with the United States on shipments of household goods of military personnel, because, in dealing with the Government as shipper at reduced rates, common carriers are exempt from Section 20(11) of the Interstate Commerce Act of 1887 (as amended), by virtue of Section 22 of that Act and other statutory authority?

2. Have not these carriers, in any event, complied with Section 20(11) of the Act?

PARTIES TO THE PROCEEDINGS IN THE COURT OF APPEALS

The case of Donald D. Howe v. Allied Van Lines, Inc. (No. 79-1857 in the Court of Appeals) was consolidated for purposes of briefing and argument in the Court of Appeals with eleven related cases. The parties to the related cases (No. 79-1858 through No. 79-1868 in the Court of Appeals) as they appear in this Court are as follows:

Jerry P. Hill, *Petitioner, v.* Trans-American Van Service, Inc., *Respondent*

United Services Automobile Association, *Petitioner, v.* Aero Mayflower Transit Co., Inc. and United States of America, *Respondents*

Dale DeFrank, *Petitioner, v.* Pyramid Van Lines, Inc., *Respondent*

Norman R. Foley, *Petitioner, v.* American Red Ball Transit Co., Inc., *Respondent*

Donald E. Madonna, *Petitioner, v.* Richardson Transfer & Storage Co., Inc., *Respondent*

Glenn D. Wilkerson, *Petitioner, v.* Engel Van Lines, Inc., and United States of America, *Respondents*

George J. Merkler and June D. Merkler, *Petitioners, v.* Aero Mayflower Transit Co., Inc., *Respondent*

Henry Cevallos, *Petitioner, v.* Vanpac Carriers, Inc., Inc., and Clemmer Moving & Storage Inc., *Respondents*

United Services Automobile Association, *Petitioner, v.* Wheaton Van Lines, Inc., *Respondent*

William F. Blase and United Services Automobile Association, *Petitioners, v.* National Van Lines, Inc., and United States of America, *Respondents*

United Services Automobile Association, *Petitioner, v.* Rocky Ford Moving Vans, Inc., and United States of America, *Respondents.*

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CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

Constitution of the United States

Article I,

* * *

Section 8. The Congress shall have Power . . .

To raise and support Armies, . . .

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

* * *

Military Pay & Allowances Act, 37 U. S. C. § 406

§ 406. *Travel and Transportation Allowances: dependents, baggage and household effects*

* * *

(b) In connection with a change of temporary or permanent station, a member is entitled to transportation (including packing, crating, drayage, temporary storage, and unpacking) of baggage and household effects, or reimbursement therefor, within such weight allowances prescribed by the Secretaries concerned, without regard to the comparative costs of the various modes of transportation.

(c) The allowances and transportation authorized by subsection (a) and (b) of this section . . . are—

(1) subject to such conditions and limitations;

(2) for such grades, ranks and ratings; and

(3) to and from such places;

prescribed by the Secretaries concerned. . . .

Chapter 1—Office of the Secretary of Defense

SUBCHAPTER F—TRANSPORTATION

PART 173—SHIPMENT AND STORAGE OF PERSONAL PROPERTY

Authority: 5 U. S. C. 301 and 37 U. S. C. 406

Source: 36 FR 23800, Dec. 15, 1971, unless otherwise noted.

§ 173.1 *Purpose.*

This part establishes traffic management policies governing the world wide movement, storage and handling of personal property for military and civilian personnel.

* * *

§ 173.4 *Responsibilities and policies.*

(a) The Assistant Secretary of Defense (Installations and Logistics) is assigned overall policy responsibility for the DOD personal property movement and storage program (hereafter referred to as the program). This responsibility encompasses program review and evaluation.

(b) MTMTS * is responsible, in collaboration with other appropriate DOD components, for the development and periodic review of the program to include its adequacy, standards, efficiency, economy, and cost effectiveness, and consistent with the following:

(1) *Procurement of services.* Services may be procured only from qualified carriers, storage firms and contractors.

(2) *Qualification of carriers, their agents, storage firms, and contractors.* The qualification of car-

* Military Traffic Management and Terminal Service, as Military Traffic Management Command ("MTMC") was formerly known.

riers, their agents, storage firms, and contractors will be based upon:

(i) Appropriate authority to provide the required services.

(ii) Evidence of ability to provide satisfactory service.

(iii) Evidence of satisfactory equipment and facilities, including compliance with established fire standards.

(iv) Evidence of appropriate financial responsibility, ...

* * *

(c) In addition, MTMTS is assigned responsibility for the technical direction, supervision, and evaluation of the traffic management aspects of the program on a worldwide basis, subject to the overall guidance, policies, and programs established by ASD (I&L). In carrying out this function, MTMTS will:

(1) Maintain in a current status a list of qualified carriers.

(2) Publish and maintain in a current status a DOD Personal Property Traffic Management Regulation (4500.34-R) for DOD-wide use by transportation officers in arranging for the movement, storage and handling of personal property.

* * *

(9) Be the sole negotiator, worldwide, with U. S. household goods carriers and storage firms on rates and all other matters incidental to the transportation and storage of personal property.

* * *

STATEMENT OF THE CASE

A. Background

The principal legal issue in this case, as in the related cases decided together by the Court of Appeals, is entirely one of statutory construction. Petitioner Howe contends that he is entitled to the full actual value of his household goods, destroyed by fire in shipment, in spite of an admitted contract for limitation of the carrier's liability (to 60¢ per pound per article) made by the United States Government with the carrier, as shipper of the household goods of its military personnel.

The theory of recovery is that Section 20(11) of the Interstate Commerce Act of 1887, as amended,[1] applies to Government contracts of shipment at reduced rates, and renders the Government's contract with the carrier for the benefit of the military member unlawful and void. The petitioner contends that the carrier is obliged to seek a "released rates order" from the Interstate Commerce Commission in addition to an existing order which already authorizes the carrier to offer, to the general public, tariff rates dependent upon the declared or released value of the property. The carrier (and the United States as *amicus curiae*) successfully contended below that the Interstate Commerce Commission has no jurisdiction over the reduced rates available to the Government under Section 22 of the Act, and that the particular requirements of Section 20(11), designed for the protection of the commercial shipper and general public, were not intended by Congress to apply to Government shipments at reduced rates.

1. The Interstate Commerce Act of 1887, as amended, has been revised and re-codified *without substantive change*, but with considerable change of language, and arrangement, since this case arose. As the case was litigated under the prior law, and the Stipulation of the parties makes reference to the prior law, the District Court and the Court of Appeals continued to use the section numbers and language of the prior law. We will follow this practice.

B. Procedural History

The case of *Donald D. Howe v. Allied Van Lines, Inc.*, (no. 79-1857 in the Court of Appeals) was designated by the District Court as the lead case of some twelve related cases below, raising the same principal legal issue. The parties in *Howe*, unlike the parties in the related cases, had entered into an extended Stipulation with numerous exhibits, which Stipulation was adopted by the District Court as its Findings of Fact. (A1, A9-A10)

The District Court determined that the defendant carrier had effectively limited its liability to 60¢ per pound per article under its contract with the United States, the Government bill of lading issued pursuant to the carrier's Military Rate Tender 1-H. In an opinion (A79-A97) delivered from the bench, the District Court held that Section 20(11) of the Interstate Commerce Act did not apply to shipments by the United States at reduced rates, by virtue of Section 22 of the Act.

On appeal to the Court of Appeals for the Third Circuit, the related cases were consolidated for purposes of briefing and argument. In its opinion, (A28-A52), the Court of Appeals confined its discussion of the facts to the *Howe* case, as typical of the others. (A29) The Court of Appeals affirmed the judgment of the District Court, and also concurred in the reasoning of the District Court, that Section 20(11) does not apply to shipments at reduced rates on Government bills of lading. The Court of Appeals explored *in extenso* the history of Section 20(11) and of Section 22 of the Act. The Court of Appeals found that Congress had not intended, in enacting Section 20(11) by the Carmack Amendment of 1906, and the first and second Cummins Amendments of 1915 and 1916, to limit the Government's power to contract with common carriers for more favorable rates than the regulated tariff

rates, including the power to contract for released value rates.

C. Facts

Military Rate Tender 1-H ("MRT 1-H") was a continuing offer, on the part of some 1,500 participating carriers (including Allied Van Lines) to the Department of Defense, Military Traffic Management Command ("MTMC"), of reduced rates, not available to the general public, on the shipment of household goods of military personnel under Government bills of lading. The "published tariff" of Allied Van Lines, offering rates for shipment of household goods to the general public, from which deviation on any private shipment is a criminal offense, was Tariff No. 175-C. The reduced rates of MRT 1-H are an exception, by authority of Section 22 of the Act, permitting reduced rates for the Government, to the rates of the carrier's published tariff for the general public.

When Donald D. Howe, Petitioner herein, then a lieutenant commander in the United States Navy, made arrangements with the transportation officer at the United States Naval Academy, Annapolis, Maryland, for the shipment of his household goods, Howe was separating from the Naval Service. He was entitled, as a member of a uniformed service making a permanent change of station, to the transportation of his household goods, at Government expense, under 37 U. S. C. 406(b). For its part, MTMC was entitled, by virtue of its acceptance of the carriers' tender of rates in MRT 1-H, to ship Howe's goods at the reduced rates provided in MRT 1-H.

Howe applied to the Navy for the transportation of his goods by signing DOD Form 1299 (A30) on April 26, 1977. At the time Howe made application, he was informed by the Naval Academy's transportation officer

that the carrier's liability on the shipment would be limited to 60¢ per pound per article, and that the shipment would be released by the Government to that valuation upon the Government bill of lading ("GBL").

Howe also signed DOD Form 1797, acknowledging that he had been briefed upon carrier and storage firm liability for loss or damage to his household goods. (A30) There is no question of fact that the nominal petitioner, the military member, had actual notice of the limitation of liability in the contract that would be made by the United States as shipper, for his benefit, with the carrier.

Howe was also informed, at the same time, of his entitlement under federal statute, to claim from the United States up to $15,000 for any *uninsured* loss in the event of loss or damage to his household goods in shipment. Even so, private insurance was recommended, and Howe did insure his household goods for $25,000 with United Services Automobile Association ("USAA"), a private insurer specializing in insurance for military personnel. (A30) After the loss, USAA paid Howe $22,723.77 under his insurance policy. USAA is therefore a real party in interest to the present suit, as subrogated to Howe's rights, to the extent he has recovered upon the policy. USAA is also a real party in interest to each of the related cases, as noted by the Court of Appeals in its opinion. (A30-A31)

The transportation officer at the Naval Academy made the arrangements for the shipment, on a Government Bill of Lading, at Government expense, with the carrier. The transportation officer prepared the GBL. Upon the GBL, the transportation officer, United States Naval Academy, is designated as the shipper. Donald D. Howe is designated as the consignee. The GBL includes the following clause: "HOUSEHOLD GOODS RELEASED AT A VALUATION OF $.60 PER LB PER ARTICLE."

In addition, when Allied Van Line's origin agent picked up the goods at Howe's residence in the grounds of the Naval Academy, it issued the carrier's own bill of lading as a receipt for the goods. The carrier's bill of lading was signed by Howe himself below typewritten words stating that the shipment was released to a value of 60¢ per pound per the GBL.

SUMMARY OF ARGUMENT

The writ should be denied because the Court of Appeals (and the District Court) correctly identified the flaw in each Petitioner's contention that he, and his insurance carrier, were entitled to a windfall gain from the carrier of the full actual value of the goods, in spite of the admitted contract of the United States limiting the carrier's liability, and the consignee military member's admitted knowledge of that contract.

The holding of the Court of Appeals, that Congress did not intend Section 20(11) to apply to Government shipments at reduced rates, is supported by the history of the original enactment of the Interstate Commerce Act, of the several amendments to Section 20(11), and of the 1957 amendment to Section 22 of the Act. It is not contradicted by anything in the recently enacted Motor Carriers Act of 1980, even if subsequent legislation were relevant to these cases, which it is not.

By Section 22 of the Act, part of the original Interstate Commerce Act, Congress expressly excepted government rates from the uniformity of treatment that was the principal purpose of regulation by the Interstate Commerce Commission. The Commission has no jurisdiction over government rates, and therefore has no jurisdiction to issue a "released rates order" directed specifically to the released rates charged to the Government, as Petitioners contend.

On the contrary, other federal statutes, directly concerned with military entitlements, and regulations issued thereunder with the force of law, empower Military Traffic Management Command ("MTMC") to contract with common carriers for the transportation of household goods of military personnel.

A military member whose household goods are shipped at the expense of the government does so subject

to the limitations and conditions laid down by the Secretary of Defense, with the authority of law. The military member, unlike the private citizen, is extensively protected by the Government's procedures, has notice of his rights and entitlements, and may choose the forms and extent of his protection within his statutory entitlement.

No question is raised here of the contract made in fact between the United States and the carrier, consisting of the Government Bill of Lading and the carrier's Military Rate Tender, specifically limiting the carrier's liability to 60¢ per pound per article. The *only* issue raised is whether that limitation was a legal term of the contract between the Government and the carrier. The same terms—but at a higher charge—are offered the general public, under authority of a standing "Released Rates Order," authorized by the Commission in 1967.

Nothing in the Interstate Commerce Act, or elsewhere, prohibits the United States from contracting with carriers for a reduced rate dependent upon a released value of the goods shipped, or requires carriers to obtain a "released rates order" specifically directly to government traffic; nor would the Commission be empowered to issue such an Order.

Even if Section 20(11) applied to government shipments, which it does not, its requirements for the limitation of the carrier's liability have been met. The carriers were authorized by MC-505, effective January 1, 1967, a "released rates order" of the Interstate Commerce Commission, to maintain rates dependent upon a released value for the goods. The Order does not purport to approve a particular level of rates, but authorizes carriers to offer rates of a particular kind. The rates offered the Government on the shipments here at issue were of that kind, but reduced from the rates charged the general public, because Section 22 permits rate discrimination in favor of the Government.

Persuasive authority of this Court, in the context of attempted State regulatory interference with military and government shipments intrastate, powerfully supports the statutory construction and policy considerations adopted and applied, by the Court of Appeals, in the interstate context here presented.

ARGUMENT

I. The Court of Appeals Correctly Held That Section 22 of the Interstate Commerce Act, Permitting Reduced Rates for the Government, Exempts the Common Carriers From Section 20(11) of the Act in Their Dealings With the United States as Shipper at Reduced Rates.

A. The Decision of the Court of Appeals Is Supported by Persuasive Authority From This Court.

No decision of this Court is contrary to the decision of the Court of Appeals. *Adams Express Co. v. Darden,* 265 U. S. 265 (1924), claimed as such in the Petition at 8-9, not only did not involve a government shipment, but was decided under the Interstate Commerce Act as it stood for one year only, after the First Cummins Amendment of 1915. *See* Petition at 5, 6, and 9. The Second Cummins Amendment, enacted the following year, in 1916, contained, in the words of the Court of Appeals "all the relevant language of the current section 20(11)." (A31-A32).

By contrast, *Public Utilities Commission of California v. United States,* 355 U. S. 534 (1958) and *United States v. Georgia Public Service Commission,* 371 U. S. 285 (1963), while not controlling, are persuasive authority for the construction of section 22 of the Interstate Commerce Act adopted below. In those cases, this Court forbade attempts by State regulatory agencies to compel common carriers to file their government rate tenders for the approval of those agencies. This Court found the assertion of State regulation of military (or civilian) tenders in conflict with federal policies of unregulated government rates, a policy manifested by the armed forces procurement statutes. Thus, the attempted State regulation was at variance with the Supremacy clause of the Constitution.

In the *Georgia Public Service Commission* case, this Court pointed to the Military Traffic Management Regulation, 371 U. S. at 288-289, successor to the armed forces procurement statute at issue in the *California* case, and predecessor of DOD Directive 4500.34, under which, in the instant cases, MTMC is appointed "sole negotiator, worldwide, with U. S. household goods carriers and storage firms on rates and all other matters incidental to the transportation and storage of personal property." 32 C. F. R. § 173.4(c)(9) [1978 edition.]

Under that authority, MTMC accepted the carriers' tender of rates here at issue, MRT 1-H, offering rates dependent upon a release of the goods to a value of 60¢ per pound per article. Under the same authority, MTMC promulgates the military regulation, DOD 4500.34-R, prescribing the form in which GBLs are to be prepared and issued by military transportation officers.

In striking down *State* regulation of intrastate government and military tenders, this Court noted the clearly expressed exemption from federal (ICC) regulation in Section 22 of the Act: 355 U. S. at 543, n. 10: "Section 22 of the Interstate Commerce Act, 24 Stat. 379, as amended, 49 U. S. C. § 22, exempts transportation for the United States from the rate provisions of that Act." Indeed, it was the *absence* of statutory authority comparable to Section 22 but relating to *intra*state shipments that was the sticking point for the dissenters in *Public Utilities Commission of California,* 355 U. S. at 547 (Harlan, J., dissenting).

In other words, the *intrastate* case was the hard case, in contrast to the express exemption from rate regulation under the Interstate Commerce Act. Yet Petitioners would now have the ICC assume the jurisdiction (on interstate shipments) which this Court forbade State regulatory bodies to assume (on intrastate shipments) in *Public*

Utilities Commission of California, supra, and in spite of the express exemption in the Interstate Commerce Act for government shipments at reduced rates.

B. The Interstate Commerce Commission Does Not Claim Jurisdiction Over These Government Rates.

Contrary to Petitioners' assertion, at p. 14, the ICC has not "taken the position" that it has jurisdiction over government rates, or such government rates as are dependent upon the declared or released value of the goods. The Commission has held precisely the opposite: that it does not have jurisdiction over Section 22 rates. *Tennessee Products & Chemical Corp. v. Louisville and Nashville Railroad Co.,* 319 ICC 497 (1963).

In *Practices of Motor Common Carriers of Household Goods,* 95 M. C. C. 138 (1964), cited by Petitioner at p. 14, representatives of the Department of Defense appeared as friends of the Commission. From 1962, MTMC had, as a matter of administrative convenience, required carriers submitting tenders to it to offer released rates using the then-current minimum released value approved by the ICC for the carriers' published tariff, 30¢ per pound per article. (MTMC's 1962 directive to carriers was made a part of the record in *Howe* by stipulation.) MTMC therefore had in interest in the 1964 proceedings before the Commission, as a result of which the minimum released value was raised to 60¢ per pound per article on January 1, 1967.

In 1957, ten years earlier, the ICC had asked Congress to give it jurisdiction over government rates, and to limit reduced rates under Section 22 to times of war or emergency. (A40) *See also* Interstate Commerce Commission, 70th Annual Report (1957). The proposal was rejected by Congress. Instead, Congress amended Sec-

tion 22, by adding Section 22(2), requiring carriers to submit *copies* of their government quotations to the ICC, simultaneously with their tender to the government, for public inspection and informational purposes. (A42) The Senate Report accompanying the proposed revision of Section 22, which became law as Section 22(2), expressly provided that "the Commission *would not have any regulatory authority over rates made under Section 22,* but would be required to make section 22 tenders or quotations available for public examination." (emphasis supplied). S. Rep. 410 (June 6, 1957) reprinted in U. S. Code Cong. & Admin. News 1782, 1784. *See also, Transportation of Government Traffic,* 131 MCC 845, 1980 FCC ¶ 36,913, at p. 47, 581 and n. 12.

C. There Is No Meaningful Conflict With a 1978 Decision of the Court of Appeals for the First Circuit.

There is no meaningful conflict between the decision of the Court of Appeals for the Third Circuit in *Howe v. Allied Van Lines* and that of the Court of Appeals for the First Circuit in *Anton v. Greyhound Van Lines,* 591 F. 2d 103 (1978).

There is not even an apparent conflict on Petitioners' principal contention, Petition at 9, that these carriers had not filed tariffs with the ICC pursuant to a "released rates order." In *Anton,* it was *conceded by the plaintiff* that "Greyhound maintained tariff rates approved by the ICC dependent upon the declared value of its shipments." 591 F. 2d at 108.

On Petitioners' secondary contention (which Petitioners concede at p. 10 applies to only three of the related cases for which *certiorari* is sought) there is an apparent conflict with *Anton* because the *Anton* court *assumed* that § 20(11) applied with statutory force to gov-

ernment shipments on government bills of lading at reduced rates. 591 F. 2d at 107.

The application of Section 20(11) was not contested in *Anton,* and Section 22 was not even drawn to the attention of the *Anton* Court. (A49) The *Anton* court noted the applicable Military and Government Rate Tender 1-F (a predecessor to MRT 1-H here at issue) similarly provided that shipments moving on GBLs would be *deemed* released to 60¢ per pound per article, 591 F. 2d at 105, n. 2, but, having incorrectly identified the "shipper" as the military member, and not the Government (A49), gave no effect to this provision. The Court of Appeals in *Howe v. Allied Van Lines Inc.* was confident that, had Section 22 been drawn to the attention of the Court of Appeals for the First Circuit, the result in *Anton* would have been different. (A49)

The other cases, cited by Petitioners at p. 9 as allegedly in conflict with the decision of the Court of Appeals in *Howe,* do not even raise an apparent conflict. See the discussion of the Court of Appeals at A49-A50.

D. The United States, as Shipper and Consignor of These Shipments, and Through Which the Petitioners and Their Subrogated Insurer Must Claim, Concedes the Limitation of Liability.

The Court of Appeals assumed *arguendo* that Petitioners were "holders" of the government bills of lading on which these shipments moved (A33-A34), but noted that Petitioners' rights as "holders" could rise no higher than those of the United States, the shipper and consignor upon the GBLs. (A34) The United States filed a brief as *amicus curiae* in the District Court, supporting the defendants' motion for summary judgment in all these cases, and in the Court of Appeals supporting affirmance of those judgments. The United States argued, as did these

Respondents, that Section 20(11) was inapplicable to government bills of lading by virtue of Section 22 of the Act. (A34) *See also,* Decision of the Comptroller General, May 18, 1959, 38 Comp. Gen. 768.

The Court of Appeals noted that the *Anton* court "mistakenly refers to the military person as the shipper, although it seems clear that the goods were, as here, shipped on a government bill of lading at a declared value of 60 cents per pound pursuant to a general tender to DOD." (A48-A49). See, *Anton v. Greyhound Van Lines Inc., supra,* at 105. Only the Government, not the military member, is entitled to ship at reduced rates under Section 22 of the Act. *Interpretation of Government Rate Tariff of Eastern Central Motor Carriers Ass'n.,* 332 I. C. C. 161 (1968). In the instant cases, Petitioners concede, as they must, that the government was the shipper, Petition at 11, and that the government bills of lading and the military rate tenders were the controlling documents, Petition at 6, 7, and 13.

E. The Motor Carriers Act of 1980, if Relevant to These Cases, Is Not Inconsistent With the Decision of the Court of Appeals.

Petitioners apparently believe that certain provisions of the Motor Carriers Act of 1980, effective July 1, 1980, cast light upon the intent of Congress in 1887, 1906, 1915, 1916, and 1957, in enacting and amending the Interstate Commerce Act of 1887, and, presumably, in repealing and re-enacting that Act without substantive change, in 1978. Petition at 16. Of course, a subsequently enacted statute cannot affect the outcome of cases which arose under prior law. But, in any event, nothing in the Motor Carrier Act of 1980 is inconsistent with the decision of the Court of Appeals.

The Motor Carriers Act of 1980 abolishes the separate requirement for a "released rates order" and permits motor common carriers to offer, as part of their published tariff filing with the ICC, rates in which the carrier's liability is limited to a declared or agreed-upon value (in writing) "if that value would be reasonable under the circumstances surrounding the transportation." Section 12. (A73) However, for household goods, the existing procedures are retained, and the Commission may still authorize *or require* common carriers to offer such rates. These provisions relate to tariff rates filed with the ICC pursuant to 49 U. S. C. § 10762, and not to reduced rates for the United States under Section 10721. While the Motor Carriers Act of 1980 leaves the ICC with power to require released rates from motor common carriers of household goods, that provision cannot affect government tenders, since it was early established that Section 22 is permissive, not mandatory, and gives the Government no power to require reduced rates. The language of Section 10721(b)(1) of the revised Act continues to reflect this. (A62)

The Government, in dealing with common carriers, has always required such common carriers to possess the requisite ICC operating authority. The Tender of Service from carrier to MTMC, prescribed by DOD 4500.34-R as a prerequisite to any tender of rates under Section 22, requires the carrier to certify that it possesses the appropriate ICC authority to operate as a common carrier of household goods. (The Tender of Service so required is published as an Appendix to DOD 4500.34-R, and was made a part of the record below by Stipulation.) The Motor Carriers Act of 1980 does not represent a change in existing provisions, except insofar as a more liberal policy of ICC certification is mandated for all motor common carriers other than carriers of passengers. The effect

of Section 5(b)(4)(c), (A70), is to continue the existing policy, that motor common carriers transporting household goods for the United States should possess ICC authority to operate as a motor common carrier for the general public.

II. The Carriers Have, in Any Event, Complied With Section 20(11)

A. The Interstate Commerce Commission Has Authorized These Carriers to Offer Rates Dependent Upon a Released Value of the Goods.

Petitioners' principal contention, Petition at 9-10, is that the admitted contract of shipment, limiting the carrier's liability to 60¢ per pound per article is illegal and void *because* these carriers have allegedly failed to obtain from the Interstate Commerce Commission a "released rates order" applicable to their military rate tenders. On the contrary, these carriers have obtained the only such order possible. If a released rates order was required, the requirement was satisfied by MC-505, effective January 1, 1967, and published at 49 C. F. R. § 1307.201. The Commission's Order authorizes:

> . . . *each motor common carrier* authorized to perform the specialized service of a household goods carrier . . . to establish and maintain *by filing and posting* in the manner required by the Interstate Commerce Act, *commodity rates* for the transportation . . . of household goods, as defined by the Commission. (Emphasis supplied). (49 C. F. R. § 1307. 201(a))

Petitioner admits the authority of MC-505, but maintains that such Order applies only to the carrier's published tariff for the general public, and not to the Military

Tender; and intimates that the carriers are obliged to apply for a separate authority, from the ICC, to tender "rates dependent upon the value . . . agreed upon in writing as the released value of the property" to the Government. No such additional authority is required.

B. The Government and the Carriers Had Agreed in Writing to Limit the Carriers' Liability on Each of These Shipments.

Petitioners make a secondary contention, applicable to only three of the cases here at issue, Petition at 10, that the agreement between the shipper (the Government) and the carrier on the released value of the shipment was not made in writing. But in each such case (as in all these cases at issue) the applicable military rate tender provided for a release of 60¢ per pound per article, in the absence of any endorsement upon the Government bill of lading to the contrary. Each such tender (made in writing) was accepted (in writing) for the United States by its designated agency, MTMC. The tender itself, and the non-endorsed GBL as provided for therein, *is* an agreement in writing upon the released value as called for by § 20(11), even if Section 20(11) were deemed to apply to these shipments. Section 20(11) nowhere requires that the agreement in writing shall appear upon the face of the bill of lading.

Extensive military regulations, made part of the record below by Stipulation, control the issuance of Government bills of lading for shipments such as those at issue. Those regulations, found in DOD 4500.34-R by authority of DOD Directive 4500.34 (published at 32 C. F. R. §§ 173.1-173.4, 1978 edition; see pp. vii-viii *supra*) instruct the military transportation officer, who prepares the GBL, *not* to endorse the GBL "60¢ per pound per article" where the applicable Military Rate Tender pro-

vides for such limitation in the absence of a contrary endorsement. In those other cases at issue here, including *Howe v. Allied Van Lines,* where "60¢ per pound per article" appears upon the face of the GBL, that writing is—according to the contract between government and shipper—mere surplusage. Even if § 20(11) were controlling here, the "agreement in writing" required by that section is satisfied by the provision of the Military Rate Tender.

CONCLUSION

For all the above reasons, the Writ should be denied. Section 22 of the Act exempts the carriers from Section 20(11) of the Act in their dealings with the Government as shipper at reduced rates. The carriers have, in any case, complied with the provisions of Section 20(11).

Respectfully submitted,

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Supreme Court, U. S.
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No. 80-223

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONALD D. HOWE, ET AL., *Petitioners*

v.

ALLIED VAN LINES, INC., ET AL., *Respondents*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD DISTRICT

BRIEF OF RESPONDENT AMERICAN RED BALL TRANSIT CO., INC. IN OPPOSITION

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QUESTION FOR REVIEW

Whether former 49 U.S.C. §22, now 49 U.S.C. §10721 (1980), permits motor common carriers to contract with the United States Government for a limitation of liability for loss or damage to the household goods of members of the armed services, where said household goods are shipped at Government expense and at rates lower than those available to the public, independent of the provisions of 49 U.S.C. §20(11), now 49 U.S.C. §11707 and 10730 (1980).

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DOD 4500.34-R 7

No. 80-223

IN THE
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October Term, 1980

DONALD D. HOWE, ET AL., *Petitioners*

v.

ALLIED VAN LINES, INC., ET AL., *Respondents*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD DISTRICT

BRIEF OF RESPONDENT AMERICAN RED BALL TRANSIT CO., INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STATEMENT OF THE CASE

The Supreme Court has been requested to review the judgment entered by the United States Court of Appeals for the Third Circuit in this case, *Norman R. Foley v. American Red Ball Transit Co., Inc.*, and the judgments entered by that Court in eleven other related cases.* In each of these cases, the same critical facts and the same basic legal issues are presented.

*The other cases included in the Petition for Writ of Certiorari are:

Jerry P. Hill, *Petitioner*, *v.* Trans-American Van Service, Inc., *Respondent*.

The basic legal issue presented by these cases is whether a motor common carrier and the United States Government, as shipper, can lawfully contract for a limitation of liability for damage or loss to a military service member's household goods, binding upon that military service member, when such household goods are shipped entirely at Government expense and at a lower rate which has been made available to the Government by the common carrier because of that very limitation of liability. Both the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit have concluded that 49 U.S.C. §22 affords the Government and the motor common carrier the freedom to enter into just such a limitation of liability, apart from any requirements of 49 U.S.C. §20(11).

NOTE — *(Continued)*

United States Automobile Association, *Petitioner*, *v.* Aero Mayflower Transit Co., Inc. and United States of America, *Respondents*.

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George J. Merkler and June D. Merkler, *Petitioners*, *v.* Aero Mayflower Transit Co., Inc., *Respondents*.

Henry Cevallos, *Petitioner*, *v.* Vanpac Carriers, Inc., and Clemmer Moving & Storage Inc., *Respondents*.

United Services Automobile Association, *Petitioner*, *v.* Wheaton Van Lines, Inc., *Respondent*.

William E. Blase and United States Automobile Association, *Petitioners*, *v.* National Van Lines, Inc., and United States of America, *Respondents*.

United Services Automobile Association, *Petitioner*, *v.* Rocky Ford Moving Vans, Inc., and United States of America, *Respondents*.

In *Foley v. American Red Ball Transit Co., Inc.*, the military service member had his household goods transported by American Red Ball Transit Co., Inc., entirely at Government expense, from Morgan, Utah to Kirtland Air Force Base, New Mexico. Prior to the move, the military service member was counseled regarding the limitation of liability which attached to the transportation of his household goods at Government expense, and the military service member purchased private insurance to cover any damage or loss resulting from the shipment of his household goods.

In order to transport the military service member's household goods, a contract of carriage was entered into between the Government and American Red Ball Transit Co., Inc. That contract of carriage consisted of the Government Bill of Lading, GBL No. M-0,667,122, and the applicable tender/tariff, ICC 1026, filed by Respondent, American Red Ball Transit Co., Inc. As will be discussed, *infra*, the contract clearly provided for a contractual limitation of liability on the subject shipment of 60 cents per pound per article.

SUMMARY OF ARGUMENT

Respondent, American Red Ball Transit Co., Inc., respectfully requests that the Supreme Court not grant the Writ of Certiorari as prayed for by Petitioner, Norman R. Foley.

It is the position of Respondent, American Red Ball Transit Co., Inc., that both the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit properly concluded that 49 U.S.C. §22 affords the Government the right to enter into a contractual limitation of liability so as to insure that it will be able to ship at the lowest available rates. Under the provisions of 49 U.S.C. §22, such a limitation of liability may be established apart from any of the requirements of 49 U.S.C. §20(11). The contract of carriage between the shipper, the United States Government, and the carrier, American Red Ball Transit Co., Inc., specifically provided for a limitation of liability to 60 cents per pound per article.

It is further the position of Respondent, American Red Ball Transit Co., Inc., that, contrary to the suggestion made by Petitioner, there is no real conflict between the decisions rendered by the United States Courts of Appeals for the Third and First Circuits, since the decision of the latter Court in *Anton v. Greyhound Van Lines, Inc.*, 591 F.2d 103 (1st Cir. 1978) was rendered without that Court having considered the effect of 49 U.S.C. §22.

ARGUMENT

POINT 1

The United States Court of Appeals for the Third Circuit Correctly Held that the Provisions of 49 U.S.C. §22 Allowed the United States Government, as Shipper, and a Motor Common Carrier to Enter into a Contractual Limitation of Liability which is Binding on the Military Service Member Irrespective of the Provisions of 49 U.S.C. §20(11).

While a fundamental purpose of the Interstate Commerce Act, 49 U.S.C. §1 *et seq.*, since its enactment has been to prohibit discriminations in rate and service by carriers among their customers, *see Texas and Pacific Railway Co. v. Abilene Cotton Oil Company*, 204 U.S. 426, 439-440 (1907), the Act specifically provides that

> "Nothing in this chapter shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, state, or municipal governments, or for charitable purposes. . ."

49 U.S.C. §22(1). Accordingly, courts have consistently held that rates charged to the Government are outside the regulatory scheme of the Interstate Commerce Act. *See Public Utilities Commission of California v. United States*, 355 U.S. 534, 543, n.10 (1958); *Atchison, Topeka & Santa Fe Railway Co. v. Aircoach Transportation Association*, 253 F.2d 877 (D.C. Cir. 1958); *Great Northern Railway Company v. United States*, 312 F.2d 901, 903 (Ct. Cl. 1962); *Atchison, Topeka & Santa Fe Railway Co. v. United States*, 572 F.2d 843, 844 (Ct. Cl. 1978). *Cf., Nashville, Chattanooga & St. Louis Railway v. Tennessee*, 262 U.S. 318 (1923).

The Comptroller General has considered the precise question which the Petitioner seeks to place before this Court and has concluded that

> "The effect of Section 22 is to exclude from the operation of the Act the carriage, storage and handling of property free or at reduced rates for the United States."

38 Comp. Gen. at 769.

Petitioner, Norman R. Foley, argues that the Government Bill of Lading in this case did not "make any reference whatsoever to a declared value or released rate or even to any intention to ship on any limitation of carrier liability." (*See* Petitioners' Brief at 10-11). This is not the case. The Government Bill of Lading, GBL No. M-0,667,122, specifically stated in Condition No. 5 that

> "It is mutually agreed upon and understood between the United States and the carrier who are parties to this bill of lading that . . . This shipment is made at the restricted or limited valuation specified in the tariff or classification at or which the lowest rate is available, unless otherwise indicated on the face hereof."

The tariff or classification at which such "lowest rate" was available was ICC 1026. Government Bill of Lading, GBL No. M-0,667,122, made specific reference to ICC 1026 under the heading "Tariff or Special Rate Authorities." In turn, ICC 1026 made specific reference to MRT 1-H as governing the services, rates or charges for such shipments. (A1)

MRT 1-H was a tender by the Household Goods Carriers' Bureau to the Government on behalf of some 1,500 participating carriers, including Respondent, American Red Ball Transit Co., Inc., of reduced rates not available to the general public, for the shipment of household goods of military service members under Gov-

ernment Bills of Lading. The reduced rates of MRT 1-H were authorized under 49 U.S.C. §22. The tender was accepted by the Department of Defense, effective May 1, 1977. At Item 9(a), MRT 1-H specifically provided that

> "Shipments moving on Government Bills of Lading, Government Purchase Orders or Commercial Bills of Lading endorsed to a Government Bill of Lading prior to delivery, will be deemed released to a value of 60 cents per pound per article, unless specifically annotated thereon." (A2)

As nothing appears on the face of the Government Bill of Lading, GBL No. M-0,667,122, to indicate that the shipment was to be made at other than the released valuation rate of 60 cents per pound per article as specified in MRT 1-H, it is beyond doubt that the Government and the Respondent, American Red Ball Transit Co., Inc., agreed to such a limitation of liability and made such a limitation an express term of their contract of carriage. (*See* Petitioners' Brief at A81)

It may be further noted that the Department of Defense, in addition to requiring the use of a Government Bill of Lading for the transportation at Government expense of a military service member's household goods, also directs the Military Installation Transportation Officer in the preparation of the Government Bill of Lading. DOD 4500.34-R, par. 6009(b)(13)(b) specifically provides that

> "Released valuation will not be shown on the GBL when the governing Military Rate Tender provides that shipments will be deemed released to a value of 60 cents per pound per article, unless otherwise specifically annotated on the GBL." (A3)

Since the governing Military Rate Tender, MRT 1-H, did specifically provide for such a limitation, the fact that the face of Government Bill of Lading, GBL No. M-0,667,122, may not have carried a specific notation to

the effect that the shipment was released to 60 cents per pound per article is entirely irrelevant. *See in this connection, Strickland Transportation Company v. United States,* 334 F.2d 172, 179 (5th Cir. 1964), where the United States Court of Appeals for the Fifth Circuit held that where the Government Bill of Lading provides that the shipment is to be made

> "at the restricted or limited valuation specified in the tariff or classification at or under which the lowest rate is available, unless otherwise indicated on the face thereof",

there is no need for the Government Bill of Lading to contain a specific released valuation notation.

POINT 2

There is No Actual Conflict between the Decisions of the United States Courts of Appeal for the Third and First Circuits.

Petitioner has asserted that there is a conflict between the decisions of the United States Court of Appeals for the First Circuit in *Anton v. Greyhound Van Lines, Inc., supra,* and the decisions rendered below by the United States Court of Appeals for the Third Circuit. At the time the Third Circuit entered its order in this case and in the eleven related cases, that Court was well aware of the *Anton* case.

> "The Court [First Circuit] mistakenly refers to the military person as the shipper, although it seems clear that the goods were, as here, shipped on a government bill of lading at a declared value of 60 cents per pound pursuant to a general tender to the DOD. No mention is made in the opinion of section 22, and apparently it was not called to the court's attention. Had it been, we are confident that the result in

Anton would have been different." (*See* Petitioners' Brief at A48-49)

Reproduced in the following Appendix at A4 *et seq.* is the relevant portion of appellant Greyhound Van Lines, Inc.'s brief in *Anton v. Greyhound Van Lines, Inc., supra.* It may be noted that the appellant-carrier argued only that it had complied with the requirements of 49 U.S.C. §20(11), and not that 49 U.S.C. §22 allowed the carrier and the Government to contract for a limitation of liability apart from the requirements of 49 U.S.C. §20(11).

CONCLUSION

For all the foregoing reasons, Respondent, American Red Ball Transit Co., Inc., respectfully requests that a Writ of Certiorari not be issued to review the order of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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Attorney for Respondent
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Of Counsel:
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John J. Soroko
Richard M. Gates

UNIFORM TENDER OF RATES AND/OR CHARGES FOR TRANSPORTATION SERVICES

1. COMMODITY OR SERVICE	2. ICC NUMBER AND SUPPLEMENT NUMBER (if any) AND CANCELLATIONS (if any)	
HOUSEHOLD GOODS DOMESTIC DOOR TO DOOR MOTOR VAN (CODE 1)	ICC NO. #1026 CANCELS: NONE	
3. FROM (Delete one) SHIPMENTS CONTROLLED BY AND MOVING ON GBL'S ISSUED BY: HILL AFB, UTAH	4. ISSUE DATE NOVEMBER 1,1976	5. EXPIRATION DATE (if any) JUNE 2,1977
6. TO (Delete one) SEE APPENDIX I	7. EFFECTIVE DATE MTMC ACC. DATE	8. FILE NUMBER

9. ISSUING CARRIER, BUREAU, AGENCY OR CONFERENCE

AMERICAN RED BALL TRANSIT CO., INC. (AMRB)

10. I AM (WE ARE) AUTHORIZED TO AND DO HEREBY OFFER ON A CONTINUING BASIS TO THE UNITED STATES GOVERNMENT, HEREINAFTER CALLED THE GOVERNMENT, PURSUANT TO SECTION 22 OF THE INTERSTATE COMMERCE ACT, OR OTHER APPROPRIATE AUTHORITY, THE TRANSPORTATION SERVICES HEREIN DESCRIBED, SUBJECT TO THE TERMS AND CONDITIONS HEREIN STATED, THE PROPERTY TO WHICH RATES HEREIN APPLY, MUST BE SHIPPED BY OR FOR THE GOVERNMENT (1) ON GOVERNMENT BILLS OF LADING, (2) ON COMMERCIAL BILLS OF LADING ENDORSED TO SHOW THAT SUCH BILLS OF LADING ARE TO BE EXCHANGED FOR GOVERNMENT BILLS OF LADING AT DESTINATION, OR (3) ON COMMERCIAL BILLS OF LADING ENDORSED WITH THE FOLLOWING LEGEND: "*Transportation hereunder is for the Government, and the actual transportation cost paid to the carrier(s) by the shipper or receiver is to be reimbursed by the Government.*"

11. RATE(S)	12. MINIMUM WEIGHT(S)	13. ROUTE(S)
SEE APPENDIX I & II.	500 POUNDS NET PER SHIPMENT	COMPETITIVE WITH KING VAN LINES, INC. ICC NO. 726.
14. TRAILER INTERCHANGE ☐ YES ☒ NO	*SPECIFY VOL-TIL-CIL A/O or PER SHIPMENT	

15. CLASSIFICATIONS AND EXCEPTIONS

UNLESS OTHERWISE SPECIFICALLY STATED HEREIN, THE SERVICES, RATES, OR CHARGES SHOWN HEREIN ARE SUBJECT TO THE RULES OF THE FREIGHT CLASSIFICATION OR EXCEPTIONS THERETO WHICH AT THE TIME OF MOVEMENT WOULD GOVERN THE APPLICABLE CLASS RATES FROM AND TO THE POINTS AND VIA THE ROUTES PROVIDED IN THIS TENDER.

HHGCB MRT 1-H, ALL SUPPLEMENTS THERETO AND REISSUES THEREOF.
HHGCB MILEAGE GUIDE NO. 10.

16. ACCESSORIAL SERVICES

THE ACCESSORIAL SERVICES SHOWN BELOW WILL BE FURNISHED BY THE CARRIER ON REQUEST OF THE SHIPPER AT THE RATES OR CHARGES SPECIFIED IN THIS ITEM, WHICH WILL BE IN ADDITION TO THE RATES OR CHARGES SHOWN IN ITEMS 11 and 12. SUCH REQUESTS MUST BE SHOWN ON THE BILL OF LADING AND INITIALED BY THE PERSON REQUESTING SAME.

HHGCB MRT 1-H, ALL SUPPLEMENTS THERETO AND REISSUES THEREOF, EXCEPT AS SHOWN IN APPENDIX III.

HHGCB MRT 1-H, ADDITIONAL TRANSPORTATION CHARGE WILL NOT APPLY.
HHGCB MRT 1-H, ITEM 12, SHIPMENT CHARGE WILL APPLY.

17. LAWFUL PERFORMANCE: OPERATING AUTHORITIES

IN MAKING THIS TENDER THE CARRIER(S) REPRESENT(S) TO THE UNITED STATES THAT THE SERVICES WILL BE PERFORMED IN ACCORDANCE WITH APPLICABLE FEDERAL, STATE AND MUNICIPAL LAWS AND REGULATIONS AND THAT THE CARRIER(S) POSSESS(ES) THE REQUIRED OPERATING AUTHORITY TO TRANSPORT THE COMMODITY FROM TO OR BETWEEN THE PLACES HEREIN SET FORTH, AS EMBRACED IN THE FOLLOWING DOCKETS, PERMITS OR TEMPORARY OPERATING AUTHORITIES

I.C.C. MC 6992

EXCERPT FROM ICC 1026

SECTION 2 (Continued)

ITEM 9 — DECLARED OR RELEASED VALUE ON SHIPMENTS MOVING ON GOVERNMENT BILLS OF LADING, GOVERNMENT PURCHASE ORDERS, OR COMMERCIAL BILLS OF LADING ENDORSED TO BE CONVERTED TO A GOVERNMENT BILL OF LADING PRIOR TO DELIVERY.

(a) Shipments moving on Government Bills of Lading, Government Purchase Orders or Commercial Bills of Lading endorsed to be converted to a Government Bill of Lading prior to delivery, will be deemed released to a value of 60 cents per pound per article, unless otherwise specifically annotated thereon.

(b) If the shipment is expressly released to a declared lump sum value for the entire shipment, and the value declared is less than $1.25 times the net weight (in pounds) of the shipment, such declaration will be ineffective, and the shipment will be deemed instead to have been released to a declared lump sum value equal to $1.25 times the net weight (in pounds) of the shipment.

(c) When the shipment is expressly released to a valuation in excess of 60 cents per pound per article, additional valuation charges as provided for in Item 190 hereof will apply.

(d) The carrier's maximum liability shall be either, (1) $1.25 times the net weight (in pounds) of the shipment or the declared lump sum value, whichever is greater; or (2) sixty (60) cents per pound for the net weight of any lost or damaged article or articles if the shipment has not been expressly released to a declared lump sum value.

(e) The released value and the carrier's maximum liability (whether or not loss or damage occurred from carrier negligence), as determined under this item, shall apply to claims resulting from the performance by carrier of any services, including accessorial services, which carrier has contracted to perform.

ITEM 10 — DECLARED OR RELEASED VALUE ON SHIPMENTS MOVING ON COMMERCIAL BILLS OF LADING AS PROVIDED FOR IN ITEM 8 OF THIS TARIFF.

(a) On shipments moving on Commercial Bills of Lading containing certification as provided for in Item 8 of this tariff, the released value must be entered on the Commercial Bill of Lading in the following form and may be completed only by the person signing the Commercial Bill of Lading.

The shipment will move subject to the rules and conditions of the carrier's tariff. Shipper hereby releases the entire shipment to a value not exceeding

_____

(to be completed by the person signing below)

NOTICE: THE SHIPPER SIGNING THIS CONTRACT MUST INSERT IN THE SPACE ABOVE, IN HIS OWN HANDWRITING, EITHER HIS DECLARATION OF THE ACTUAL VALUE OF THE SHIPMENT, OR THE WORDS "60 cents per pound per article." OTHERWISE, THE SHIPMENT WILL BE DEEMED RELEASED TO A MAXIMUM VALUE EQUAL TO $1.25 TIMES THE WEIGHT OF THE SHIPMENT IN POUNDS.

_____
(Shipper)

_____
(Date)

(b) If the shipper fails to make the entry required in subsection (a) of this item, the shipment will be deemed released to an amount equal to $1.25 times the net weight of the shipment (in pounds).

(c) If the shipment is expressly released to a declared lump sum value for the entire shipment, and the value declared is less than $1.25 times the net weight (in pounds) of the shipment, such declaration will be ineffective, and the shipment will be deemed instead to have been released to a declared lump sum value equal to $1.25 times the net weight (in pounds) of the shipment.

(d) When the shipment is deemed released or is expressly released to a valuation in excess of 60 cents per pound per article, additional valuation charges as provided for in Item 190 hereof will apply.

(e) The carrier's maximum liability shall be either, (1) $1.25 times the net weight (in pounds) of the shipment or the declared lump sum value, whichever is greater; or (2) sixty (60) cents per pound for the net weight of any lost or damaged article or articles if the shipment has been expressly released by the shipper to such value per article.

(f) The released value and the carrier's maximum liability (whether or not loss or damage occurred from carrier negligence), as determined under this item, shall apply to claims resulting from the performance by carrier of any services, including accessorial services, which carrier has contracted to perform.

THIS SPACE INTENTIONALLY LEFT BLANK

member on DD Form 1299.) The released valuation will be no less than the following:

1. INTERSTATE WITHIN CONUS—60 cents per pound per article. (Released valuation will not be shown on the GBL when the governing Military Rate Tender provides that shipments will be deemed released to a value of 60 cents per pound per article, unless otherwise specifically annotated on the GBL).

*2. INTRASTATE—Released valuation will be at the amount cited in the carrier's rate tariff or tender. Shipments tendered to a carrier at rates cited in the applicable Household Goods Carrier Bureau and Mover's and Warehousemen's Association of America rate tenders are deemed released to a value of 60 cents per pound per article unless otherwise specifically annotated on the GBL.

3. INTERNATIONAL TGBL—30 cents per pound per article.

Note. Additional charges resulting from released valuation in excess of the prescribed minimums will be collected from the member by the appropriate military service finance center, except for those members no longer in pay status.

(c) *Professional books, papers, and equipment (PBP&E).* When the shipment contains PBP&E, enter "Weight includes _____ pounds of professional books, papers, and equipment." The carrier will insert the weight. When the actual weight is not readily available, a constructive weight based on 25 pounds per cubic foot will be used.

(d) *Service data.* Enter the following:

REQUESTED PICKUP DATE:
REQUIRED DELIVERY DATE:
DATE OF DELIVERY INTO SIT:

The ITO will enter the specified pickup and delivery dates. The carrier will enter the actual date of delivery into SIT and/or residence as applicable.

(e) *Customer Identification Code (CIC).* Rescinded.

(f) *Special authorization.* For shipment citing Army or Air Force appropriation (Key (11) above) made from or consigned to a point not specified in the change of station order, enter "Shipment authorized from (city/military installation and State/country) to (city and State/country)."

(g) *Use of Government-owned containers.* When Government-owned containers are used for shipment moving in TGBL service, annotate the GBL in accordance with the applicable Military Rate Tender. Also, the number and type of containers will be entered.

(h) *For Army and Air Force shipments only.* For shipments to or from oversea areas where service administrative weight limitations are in effect, add the following notation in the body of the GBL: "Maximum administrative weight allowance for household goods and unaccompanied baggage is (insert weight lbs.)." (Reference: MS003–2, JTR.)

Note. This provision is not applicable to those shipments for members being returned from oversea weight limitation areas for separation in a "non-pay" status.

(i) *Export-import annotations.*

1. For shipments moving by air, originating in CONUS and destined overseas, enter in capital letters: "FOR EXPORT."

2. For shipments moving by air, originating overseas and destined to CONUS, enter in capital letters: "IMPORTED BY AIR."

*(j) For Navy shipments enter "Rank/Rate Code____." This code is the one digit alpha character immediately following the appropriation and subhead in the accounting data contained in the member's orders, e.g., NDH3 1731453.2252 G (Rank/Rate Code) 000022, etc." For consolidated shipments on separate GBLs, make an entry at bottom of the "Description of Articles" box, "NOTE: Shipment consolidated with GBL(s) # _____."

(k) *Firearms.* When the shipment contains firearms, enter—"This shipment contains firearms."

(14) *Key (14). NUMBERS OF PACKAGES AND WEIGHTS.* In the column headed "NUMBER OF PACKAGES" enter "GROSS," "TARE," and "NET." Also, for containerized shipment, enter "TOTAL NO. OF CONTAINERS" and "GROSS CUBE." The carrier will insert the weight, container, and cube information in the column headed "WEIGHTS."

(15) *Key (15). FOR USE OF DESTINATION CARRIER ONLY.* This section will be left blank for carrier use. The carrier will enter data as required for billing and by the

EXCERPT FROM BRIEF FILED ON BEHALF OF APPELLANT GREYHOUND VAN LINES, INC. IN *ANTON v. GREYHOUND VAN LINES, INC.*, No. 77-1409 (1st Cir. 1978)

ARGUMENT

I. THE DEFENDENT PROPERLY LIMITED ITS LIABILITY IN THIS CASE TO $.60 PER POUND PURSUANT TO THE PROVISIONS OF THE CARMACK AMENDMENT TO THE INTERSTATE COMMERCE ACT, 49 U.S.C. §20(11), WHEN THIS LIMITATION WAS AGREED TO IN WRITING BY THE DEFENDANT AND THE UNITED STATES AIR FORCE, THE PLAINTIFF'S AGENT FOR THE SHIPMENT OF HER GOODS, NOTWITHSTANDING THE FACT THAT THE PLAINTIFF HAD NO ACTUAL KNOWLEDGE OF THE LIMITATION.

The extent of Greyhound's liability in this case is controlled by the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. §20(11). It provides in pertinent part:

> Any common carrier . . . shall be liable . . . for any loss, damage, or injury to any property [shipped goods]. Provided, however, that the provisions hereof respecting liability for actual loss, damage or injury, notwithstanding any limitations of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply . . . second, to property . . . received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case

such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not to exceed the value so declared or released. . . .

The Carmack Amendment imposes a single uniform federal regulation upon the obligations of interstate carriers for the destruction of shipped goods. *Adams Express Co. v. Croninger*, 226 U.S. 491 (1913); *New York, New Haven and Hartford R.R. v. Nothnagle*, 346 U.S. 128 (1953); *Atchison, Topeka and Santa Fe R.R. v. Herald*, 241 U.S. 371 (1916); *Southern R.R. v. Prescott*, 240 U.S. 637 (1916); *American Synthetic Rubber Corp. v. Louisville and Nashville R.R.*, 422 F.2d 462 (6th Cir. 1970); *Rocky Ford Moving Vans, Inc. v. United States*, 501 F.2d 1369 (8th Cir. 1974).

A common carrier, pursuant to the Carmack Amendment, becomes liable for "any loss, damage, or injury" to shipped goods in its possession. However, the Carmack Amendment enables the carrier to limit its liability for such loss. In order for the carrier to properly limit its liability, it must have an approved tariff schedule on file with the Interstate Commerce Commission establishing and maintaining rates "dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property" and the goods must have been shipped under the tariff schedule. Such limitations are valid and binding even where the limits are disproportionate to the actual value of the shipment. *Pierce Co. v. Wells Fargo and Co.*, 236 U.S. 278 (1915); *Lux Art Van Service, Inc. v. Pollard*, 344 F.2d 883 (9th Cir. 1965), *cert denied*, 382 U.S. 837 (1966).

Therefore, in order for Greyhound to successfully limit its liability in this case, it is simply necessary for Greyhound to establish that it had an approved tariff schedule on file with the Interstate Commerce Commission which afforded customers a choice of rates depending upon the released value of the goods shipped and es-

tablish that the plaintiff's household goods were shipped under the tariff schedule. It is well established that shippers are charged with notice of terms, conditions, and regulations contained in the tariff schedule pertaining to the carrier's liability which affect the rates of carriage and are bound by them. A shipper is presumed to have knowledge of the existence of alternate rates, based upon the declared value of the goods, and is therefore limited in recovery against a carrier in case of loss, to the amount shown by the tariff schedule as applicable to the rate charged. *American Railway Express Co. v. Daniel*, 269 U.S. 40 (1925); *American Railway Express Co. v. Lindhenburg*, 260 U.S. 584 (1923).

There is no requirement that the shipper actually sign the bill of lading which establishes the liability limits. *American Railway Express Co. v. Lindhenburg*, 260 U.S. 584 (1923).

In *Rocky Ford Moving Vans, Inc. v. United States*, 501 F.2d 1369 (8th Cir. 1974), it was shown that the shipper, an air force officer, had signed a bill of lading and had released his goods at a value of $.60 per pound and recovery was accordingly limited. However, the Court indicated that recovery would likewise have been limited without a showing that the officer had signed the bill of lading with a released value since the shipment in question was released under a United States Government Bill of Lading issued pursuant to an approved tariff schedule which provided that such shipments were "deemed released at a value of $.60 per pound per article unless otherwise specified on the bill". 501 F.2d at 1373 n7.

The defendant is not unmindful of the Supreme Court's observations in *New York, New Haven and Hartford R.R. v. Nothnagle*, 346 U.S. 128 (1953), where the Court indicated that a common carrier, to successfully limit its liability, must grant "its customers a fair opportunity to choose between higher or lower liability

by paying a correspondingly greater or lesser charge". Nevertheless, it still remains immaterial whether Juliet Anton, the plaintiff in this case, was ever personally aware of the $.60 per pound liability limitation. It is well established law that an agent who has authority to ship goods has authority to agree upon the terms of the shipment for its principal. *Great Northern Railway v. O'Connor*, 232 U.S. 508 (1914); *Lux Art Van Service, Inc. v. Pollard*, 344 F.2d 883 (9th Cir. 1965) (dicta), *cert denied*, 382 U.S. 837 (1966); *Lucien Piccard Watch Corp. v. American Airlines, Inc.*, 328 N.Y.S.2d 74, 68 Misc. 2d 664 (1972); *Universal Limited, Inc. v. S. Stern & Co.*, 311 N.Y.S.2d 317, 34 A.D. 2d 770 (1970); *Oregon Shortline Railway v. Blyth*, 118 P. 639 (Wyo. 1911); *Russell v. Erie R. Co.*, 59 A. 150 (N.J. 1904); *California Powder Works v. Atlantic and Pacific Ry.*, 45 P. 691 (Cal. 1896).

The fact surrounding the shipment of goods and the issuing of the various bills of lading in this case is not difficult to ascertain. The plaintiff, in connection with her release from active duty from the United States Air Force, directed the Air Force to place all of her household belongings in permanent storage at the Alabama Transfer & Warehouse Company in Montgomery, Alabama. (Statement of Agreed Facts, App. I-K) The plaintiff was subsequently notified by the Air Force that her goods could no longer remain in permanent storage at Government expense and that it would be necessary for her to make suitable arrangements to remove these goods from storage. (Transcript at 68, App. II-B) Accordingly, the plaintiff notified the Traffic Management Office at Maxwell Air Force Base that she wanted to have her goods removed from storage and, at Government expense, shipped to a warehouse in Manchester, New Hampshire. (Exhibit 6, App. III-D; Transcript at 75, App. II-B) Acting on this request, the United States Air Force contacted Triple A Associates Moving & Storage

Company, Greyhound's agent, and requested that Greyhound perform these services. (Swanner deposition at 10, App. II-F) The Traffic Management Office at Maxwell Air Force Base prepared a Government Bill of Lading and delivered it to Greyhound's agent. (Swanner deposition at 12, App. II-F) Although it appears unlikely that the Government Bill of Lading actually had the $.60 per pound limitation on liability inserted in it when it was issued, it is indisputable that the Government Bill of Lading made reference to Military and Government Rate Tariff No. 1-F and indicated that the shipment was being made pursuant to the terms of the tariff. (Exhibit 29, App. III-O) Following receipt of the Government Bill of Lading, Greyhound prepared its own internal bill of lading which was necessary in order to affix their ICC number to the shipment. (Exhibit 4, App. III-C; Swanner deposition at 17, App. II-F; Transcript at 311-312, App. II-G) The Greyhound Bill of Lading contains no liability limitation other than reference back to the Government Bill of Lading and the Military and Government Rate Tariff. While being shipped under the authority extended by the Government Bill of Lading, the plaintiff's goods were damaged.

It is also undisputed that the Military and Government Rate Tariff No. 1-F was properly on file with the Interstate Commerce Commission at all relevant times and that Greyhound was a participant in this tariff. (Transcript at 307, App. II-G; Exhibit 37 at 11, App. III-P) The District Court made a finding to this effect at page 345 in the transcript. (App. II-H) The tariff provides:

> (a) Shipments moving on Government Bills of Lading, Government Purchase Orders or Commercial Bills of Lading endorsed to be converted to a Government Bill of Lading prior to delivery, will be deemed released to a value of $.60 per pound per ar-

ticle, unless otherwise specifically annotated thereon.

(Exhibit 37 at 28, App. III-T)

Representatives from Greyhound Van Lines, John Swanner and James Bourdon, testified that all shipments for military members travel on Government Bills of Lading and that liability is limited to $.60 per pound. (Swanner deposition at 14, App. II-F; Transcript at 314, App. II-G) Mr. Bourdon testified as to the arrangements which could have been made to have the liability limits increased with proportionate increases in the amount charged for the shipment. (Transcript at 317, App. II-G)

Following the loss, the United States Air Force computed Greyhound's liability based upon the $.60 per pound limitation contained in the applicable rate tariff. (Exhibit 39, App. III-R) This liability, $2,896.03, was paid by Greyhound to the United States Government for the loss. (Transcript at 319, App. II-G)

Mr. Swanner testified that he believed that the United States Air Force was acting as an agent for the plaintiff in connection with her shipment and that the Air Force had the authority to have the goods released at a liability limit of $.60 per pound. (Swanner deposition at 20, App. II-F) Furthermore, the District Court, after hearing all of the evidence, found that "the plaintiff, Miss Anton, did make the United States Air Force her agent" in connection with this shipment. (Transcript at 349, App. II-H) The Court further found that Greyhound had properly limited its liability with the United States Air Force to $.60 per pound but that, since the plaintiff was not aware of the limitation, the defendant could not benefit from the limitation. (Transcript at 349, App. II-H) Accordingly, a directed verdict on the issue of liability was entered in the plaintiff's favor. It is submitted that this constitutes error as a matter of law.

The defendant has been able to locate two cases which appear to be directly on point. The case of *Holmes*

v. National Van Lines, Inc., 350 P.2d 864 (Wash. 1960), involves an employee of Boeing Aircraft Company who was transferred by his employer. The employer made all arrangements for the shipment of the employee's household goods. As in this case, Boeing selected the carrier, negotiated the terms of carriage and paid the carrier's fee. The Court found that:

> Boeing was, beyond all question, the agent of the shipper in selecting the carrier and in negotiating the terms of the carriage, and in paying for the same.

350 P.2d at 866. The bill of lading pertaining to these goods was not signed by either the employee or by Boeing. However, the Court, in limiting the carrier's liability to that provided in the bill of lading, stated:

> Signature is, of course, the best evidence of agreement, but is not required. . . . Neither is delivery to and acceptance of the bill of lading by the shipper, prior to shipment, necessary. . . . It is sufficient, if the writing expresses the agreement of the parties. (citations omitted)

350 P.2d at 866.

In *Norman v. Burham's Van Service*, 73 So.2d 640 (La. 1954), the plaintiff was a naval officer, who, upon release from active duty, was having his household goods shipped from Portsmouth, Virginia to New Orleans. As here, all arrangements for the shipment were made by the United States Navy and the Navy paid the carrier's costs. The Court held:

> In view of these facts, we can only come to the conclusion that the Navy Department, through its supply officer at Portsmouth, acted in the capacity of plaintiff's agent in the matter of the shipment and the plaintiff became effectively bound by whatever

> arrangements the supply officer had made with the carrier.
>
> . . . .
>
> A carrier has the right to assume that an agent or freight forwarder has the authority to agree upon the terms of the shipment for his principal.

73 So.2d at 643. Accordingly, the Court limited the carrier's liability to that established by the applicable tariff schedule, in that case $.30 per pound.

Furthermore, it should be noted that Government regulations provide members of the military with an option of shipping items of extraordinary value in a manner which will provide additional liability protection for the service member. However, these regulations provide that "increased valuation charges incurred over and above the carrier's lowest released valuation will be borne by the member". Personal Property Traffic Management Regulation, DOD4400.34-R, §4008(b). (App. III-N) To permit the plaintiff to recover more than the agreed limits of liability, after the benefits of the lower rates based on the $.60 per pound figure had been received, would "violate the plainest principles of fair dealing". *American Railway Express Co. v. Lindhenburg*, 260 U.S. 584, 592 (1923).

The defendant is well aware that there are numerous cases in which the owner of household goods is not bound by limitations in liability agreed to by the party arranging for the shipment. *Lux Art Van Service, Inc. v. Pollard*, 344 F.2d 883, *cert denied*, 382 U.S. 837 (1966). However, those cases involve situations where the shipper's agent had no actual authority to even ship the goods. In *Lux Art Van Service, Inc. v. Pollard*, the "agent" simply had possession of the item and had no authority to ship it.

In this case, the plaintiff entrusted the entire move to the United States Air Force. The Air Force made all contact with the defendant, issued the appropriate bill of

lading and paid the carrier for the services. The carrier, Greyhound, had a right to believe and did believe that the Air Force was the plaintiff's agent for all purposes in connection with the move and agreed with the Air Force that the goods would be released at $.60 per pound. Accordingly, the plaintiff should now be bound by the agreement between the carrier and the United States Air Force and Greyhound's liability should properly be limited to $.60 per pound or $2,896.03 which has already been paid.

Supreme Court, U.S.
FILED
SEP 15 1980
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No. 80-223

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONALD D. HOWE, ET AL., *Petitioners*

v.

ALLIED VAN LINES, INC., ET AL., *Respondents*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD DISTRICT

BRIEF OF RESPONDENT ENGEL VAN LINES, INC. IN OPPOSITION

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QUESTION FOR REVIEW

Whether former 49 U.S.C. §22, now 49 U.S.C. §10721 (1980), permits motor common carriers to contract with the United States Government for a limitation of liability for loss or damage to the household goods of members of the armed services, where said household goods are shipped at Government expense and at rates lower than those available to the public, independent of the provisions of 49 U.S.C. §20(11), now 49 U.S.C. §11707 and 10730 (1980).

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No. 80-223

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONALD D. HOWE, ET AL., *Petitioners*

v.

ALLIED VAN LINES, INC., ET AL., *Respondents*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD DISTRICT

BRIEF OF RESPONDENT ENGEL VAN LINES, INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STATEMENT OF THE CASE

The Supreme Court has been requested to review the judgment entered by the United States Court of Appeals for the Third Circuit in this case, *Glenn D. Wilkerson v. Engel Van Lines, Inc. v. United States of America*, and the judgments entered by that Court in eleven other related cases.* In each of these cases, the

*The other cases included in the Petition for Writ of Certiorari are:

Jerry P. Hill, *Petitioner*, *v.* Trans-American Van Service, Inc., *Respondent*.

same critical facts and the same basic legal issues are presented.

The basic legal issue presented by these cases is whether a motor common carrier and the United States Government, as shipper, can lawfully contract for a limitation of liability for damage or loss to a military service member's household goods, binding upon that military service member, when such household goods are shipped entirely at Government expense and at a lower rate which has been made available to the Government by the common carrier because of that very limitation of liability. Both the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit have concluded that 49 U.S.C. §22 affords the Government and the motor common carrier the freedom to enter into just such a

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NOTE — *(Continued)*

United States Automobile Association, *Petitioner*, *v.* Aero Mayflower Transit Co., Inc. and United States of America, *Respondents*.

Dale DeFrank, *Petitioner*, *v.* Pyramid Van Lines, Inc., *Respondent*.

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United Services Automobile Association, *Petitioner*, *v.* Wheaton Van Lines, Inc., *Respondent*.

William E. Blase and United States Automobile Association, *Petitioners*, *v.* National Van Lines, Inc., and United States of America, *Respondents*.

United Services Automobile Association, *Petitioner*, *v.* Rocky Ford Moving Vans, Inc., and United States of America, *Respondents*.

limitation of liability, apart from any requirements of 49 U.S.C. §20(11).

In *Wilkerson v. Engel Van Lines, Inc. v. United States of America,* the military service member had his household goods transported by Engel Van Lines, Inc., entirely at Government expense, from Columbus, Georgia to Fort Lee, Virginia. Prior to the move, the military service member was counseled regarding the limitation of liability which attached to the transportation of his household goods at Government expense, and the military service member purchased private insurance to cover any damage or loss resulting from the shipment of his household goods.

In order to transport the military service member's household goods, a contract of carriage was entered into between the Government and Engel Van Lines, Inc. That contract of carriage consisted of the Government Bill of Lading, GBL No. M-2,514,435, and the applicable tender/tariff, GRT 1-Y, filed by Respondent, Engel Van Lines, Inc. As will be discussed, *infra,* the contract clearly provided for a contractual limitation of liability on the subject shipment of 60 cents per pound per article.

SUMMARY OF ARGUMENT

Respondent, Engel Van Lines, Inc., respectfully requests that the Supreme Court not grant the Writ of Certiorari as prayed for by Petitioner, Glenn D. Wilkerson.

It is the position of Respondent, Engel Van Lines, Inc., that both the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit properly concluded that 49 U.S.C. §22 affords the Government the right to enter into a contractual limitation of liability so as to insure that it will be able to ship at the lowest available rates. Under the provisions of 49 U.S.C. §22, such a limitation of liability may be established apart from any of the requirements of 49 U.S.C. §20(11). The contract of carriage between the shipper, the United States Government, and the carrier, Engel Van Lines, Inc., specifically provided for a limitation of liability to 60 cents per pound per article.

It is further the position of Respondent, Engel Van Lines, Inc., that, contrary to the suggestion made by Petitioner, there is no real conflict between the decisions rendered by the United States Courts of Appeals for the Third and First Circuits, since the decision of the latter Court in *Anton v. Greyhound Van Lines, Inc.*, 591 F.2d 103 (1st Cir. 1978) was rendered without that Court having considered the effect of 49 U.S.C. §22.

ARGUMENT

POINT 1

The United States Court of Appeals for the Third Circuit Correctly Held that the Provisions of 49 U.S.C. §22 Allowed the United States Government, as Shipper, and a Motor Common Carrier to Enter into a Contractual Limitation of Liability which is Binding on the Military Service Member Irrespective of the Provisions of 49 U.S.C. §20(11).

While a fundamental purpose of the Interstate Commerce Act, 49 U.S.C. §1 *et seq.*, since its enactment has been to prohibit discriminations in rate and service by carriers among their customers, *see Texas and Pacific Railway Co. v. Abilene Cotton Oil Company*, 204 U.S. 426, 439-440 (1907), the Act specifically provides that

> "Nothing in this chapter shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, state, or municipal governments, or for charitable purposes. . ."

49 U.S.C. §22(1). Accordingly, courts have consistently held that rates charged to the Government are outside the regulatory scheme of the Interstate Commerce Act. *See Public Utilities Commission of California v. United States*, 355 U.S. 534, 543, n.10 (1958); *Atchison, Topeka & Santa Fe Railway Co. v. Aircoach Transportation Association*, 253 F.2d 877 (D.C. Cir. 1958); *Great Northern Railway Company v. United States*, 312 F.2d 901, 903 (Ct. Cl. 1962); *Atchison, Topeka & Santa Fe Railway Co. v. United States*, 572 F.2d 843, 844 (Ct. Cl. 1978). *Cf., Nashville, Chattanooga & St. Louis Railway v. Tennessee*, 262 U.S. 318 (1923).

The Comptroller General has considered the precise question which the Petitioner seeks to place before this Court and has concluded that

> "The effect of Section 22 is to exclude from the operation of the Act the carriage, storage and handling of property free or at reduced rates for the United States."

38 Comp. Gen. at 769.

Petitioner, Glenn D. Wilkerson, argues that the Government Bill of Lading in this case did not "make any reference whatsoever to a declared value or released rate or even to any intention to ship on any limitation of carrier liability." (*See* Petitioners' Brief at 10-11) This is not the case. The Government Bill of Lading, GBL No. M-2,514,435, specifically stated in Condition No. 5 that

> "It is mutually agreed upon and understood between the United States and the carrier who are parties to this bill of lading that . . . This shipment is made at the restricted or limited valuation specified in the tariff or classification at or which the lowest rate is available, unless otherwise indicated on the face hereof."

The tariff or classification at which such "lowest rate" was available was GRT 1-Y. Government Bill of Lading, GBL No. M-2,514,435, made specific reference to GRT 1-Y under the heading "Tariff or Special Rate Authorities."

GRT 1-Y was a tender by the Movers' & Warehousemen's Association of America, Inc. to the Government on behalf of some 500 participating carriers, including Respondent, Engel Van Lines, Inc., of reduced rates not available to the general public, for the shipment of household goods of military service members under Government Bills of Lading. The reduced rates of GRT 1-Y were authorized under 49 U.S.C. §22. The tender was accepted by the Department of Defense, effective May 1, 1977. At Item (j)(A), GRT 1-Y specifically provided that

> "Shipments moving on Government Bills of Lading, Government Purchase Orders or Commercial Bills of Lading endorsed to a Government Bill of Lading prior to delivery, will be deemed released to a value of 60 cents per pound per article, unless specifically annotated thereon." (A1)

As nothing appears on the face of the Government Bill of Lading, GBL No. M-2,514,435, to indicate that the shipment was to be made at other than the released valuation rate of 60 cents per pound per article as specified in GRT 1-Y, it is beyond doubt that the Government and the Respondent, Engel Van Lines, Inc., agreed to such a limitation of liability and made such a limitation an express term of their contract of carriage. (*See* Petitioners' Brief at A82)

It may be further noted that the Department of Defense, in addition to requiring the use of a Government Bill of Lading for the transportation at Government expense of a military service member's household goods, also directs the Military Installation Transportation Officer in the preparation of the Government Bill of Lading. DOD 4500.34-R, par. 6009(b)(13)(b) specifically provides that

> "Released valuation will not be shown on the GBL when the governing Military Rate Tender provides that shipments will be deemed released to a value of 60 cents per pound per article, unless otherwise specifically annotated on the GBL." (A2)

Since the governing Military Rate Tender, GRT 1-Y, did specifically provide for such a limitation, the fact that the face of Government Bill of Lading, GBL No. M-2,514,435, may not have carried a specific notation to the effect that the shipment was released to 60 cents per pound per article is entirely irrelevant. *See in this connection, Strickland Transportation Company v. United States*, 334 F.2d 172, 179 (5th Cir. 1964), where the United States Court of Appeals for the Fifth Circuit held

that where the Government Bill of Lading provides that the shipment is to be made

> "at the restricted or limited valuation specified in the tariff or classification at or under which the lowest rate is available, unless otherwise indicated on the face thereof",

there is no need for the Government Bill of Lading to contain a specific released valuation notation.

POINT 2

There is No Actual Conflict between the Decisions of the United States Courts of Appeal for the Third and First Circuits.

Petitioner has asserted that there is a conflict between the decisions of the United States Court of Appeals for the First Circuit in *Anton v. Greyhound Van Lines, Inc., supra,* and the decisions rendered below by the United States Court of Appeals for the Third Circuit. At the time the Third Circuit entered its order in this case and in the eleven related cases, that Court was well aware of the *Anton* case.

> "The Court [First Circuit] mistakenly refers to the military person as the shipper, although it seems clear that the goods were, as here, shipped on a government bill of lading at a declared value of 60 cents per pound pursuant to a general tender to the DOD. No mention is made in the opinion of section 22, and apparently it was not called to the court's attention. Had it been, we are confident that the result in *Anton* would have been different." (*See* Petitioners' Brief at A48-49)

Reproduced in the following Appendix at A3 *et seq.* is the relevant portion of appellant Greyhound Van Lines, Inc.'s brief in *Anton v. Greyhound Van Lines,*

Inc., supra. It may be noted that the appellant-carrier argued only that it had complied with the requirements of 49 U.S.C. §20(11), and not that 49 U.S.C. §22 allowed the carrier and the Government to contract for a limitation of liability apart from the requirements of 49 U.S.C. §20(11).

CONCLUSION

For all the foregoing reasons, Respondent, Engel Van Lines, Inc., respectfully requests that a Writ of Certiorari not be issued to review the order of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

Robert L. Pratter
Attorney for Respondent
Engel Van Lines, Inc.

Of Counsel:
Reeder R. Fox
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APPLICATION OF TENDER (Continued)

(h) CARRIER'S PUBLISHED TARIFF vs. SECTION 22 QUOTATION

Whenever the TOTAL charge of a shipment under the carrier's published tariff is lower than the TOTAL charge for such shipment under the rates provided in this Tender, the TOTAL charge developed by use of the carrier's published tariff will apply.

(i) DEFINITION OF WEIGHTS

All rates and charges herein are based on the net weight (sometimes referred to as actual weight) of the shipment subject to minimum weight as provided herein. Net weight includes the weight of the goods plus cartons, barrels, fiber drums, wardrobes, crates (mirror, marble, etc.), wooden boxes (when approved by the shipping officer), used to pack linens, books, bedding mattresses, lamp shades, draperies, glassware, chinaware, bric-a-brac, table lamp bases, kitchenware and other fragile articles, and the necessary packing and filler material incident thereto. Nothing else will be included in the net weight.

(j) DECLARED OR RELEASED VALUE ON SHIPMENTS MOVING ON GOVERNMENT BILLS OF LADING, GOVERNMENT PURCHASE ORDERS, OR COMMERCIAL BILLS OF LADING ENDORSED TO BE CONVERTED TO A GOVERNMENT BILL OF LADING PRIOR TO DELIVERY

(A) Shipments moving on Government Bills of Lading, Government Purchase Orders or Commercial Bills of Lading endorsed to be converted to a Government Bill of Lading prior to delivery, will be deemed released to a value of 60 cents per pound per article, unless otherwise specifically annotated on the Government Bill of Lading.

(B) If the shipment is expressly released to a declared lump sum value for the entire shipment, and the value declared is less than $1.25 times the net weight (in pounds) of the shipment, such declaration will be ineffective, and the shipment will be deemed instead to have been released to a declared lump sum value equal to $1.25 times the net weight (in pounds) of the shipment.

(C) When the shipment is expressly released to a valuation in excess of 60 cents per pound per article, additional valuation charges as provided for in Item 320, Section II of Tender will apply.

(D) The carrier's maximum liability shall be either, (1) $1.25 times the net weight (in pounds) of the shipment or the declared lump sum value, whichever is greater, or (2) sixty (60) cents per pound for the net weight of any lost or damaged article or articles if the shipment has not been expressly released to a declared lump sum value.

(E) The released value and the carrier's maximum liability (whether or not loss or damage occurred from carrier negligence), as determined under this item, shall apply to claims resulting from the performance by carrier of any services, including accessorial services, which carrier has contracted to perform.

(k) DECLARED OR RELEASED VALUE ON SHIPMENTS MOVING ON COMMERCIAL BILLS OF LADING AS PROVIDED FOR IN PARAGRAPH (g) OF THIS TENDER

(A) On shipments moving on Commercial Bills of Lading containing certification as provided for in Paragraph (g) of this Tender, the released value must be entered on the Commercial Bill of Lading in the following form and may be completed only by the person signing the Commercial Bill of Lading.

The shipment will move subject to the rules and conditions of the carrier's tariff.
Shipper hereby releases the entire shipment to a value not exceeding

_____
(To be completed by the person signing below)

NOTICE: THE SHIPPER SIGNING THIS CONTRACT MUST INSERT IN THE SPACE ABOVE, IN HIS OWN HANDWRITING, EITHER HIS DECLARATION OF THE ACTUAL VALUE OF THE SHIPMENT, OR THE WORDS "60 cents per pound per article." OTHERWISE, THE SHIPMENT WILL BE DEEMED RELEASED TO A MAXIMUM VALUE EQUAL TO $1.25 TIMES THE WEIGHT OF THE SHIPMENT IN POUNDS.

_____
(Shipper)

_____
(Date)

(B) If the shipper fails to make the entry required in subsection (A) of this item, the shipment will be deemed released to an amount equal to $1.25 times the net weight of the shipment (in pounds).

(C) If the shipment is expressly released to a declared lump sum value for the entire shipment, and the value declared is less than $1.25 times the net weight (in pounds) of the shipment, such declaration will be ineffective, and the shipment will be deemed instead to have been released to a declared lump sum value equal to $1.25 times the net weight (in pounds) of the shipment.

(D) When the shipment is deemed released or is expressly released to a valuation in excess of 60 cents per pound per article, additional valuation charges as provided for in Item 320, Section II of Tender will apply.

(E) The carrier's maximum liability shall be either, (1) $1.25 times the net weight (in pounds) of the shipment or the declared lump sum value, whichever is greater, or (2) sixty (60) cents per pound for the net weight of any lost or damaged article or articles if the shipment has been expressly released by the shipper to such value per article.

(F) The released value and the carrier's maximum liability (whether or not loss or damage occurred from carrier negligence), as determined under this item, shall apply to claims resulting from the performance by carrier of any services, including accessorial services, which carrier has contracted to perform.

member on DD Form 1299.) The released valuation will be no less than the following:

1. INTERSTATE WITHIN CONUS—60 cents per pound per article. (Released valuation will not be shown on the GBL when the governing Military Rate Tender provides that shipments will be deemed released to a value of 60 cents per pound per article, unless otherwise specifically annotated on the GBL).

**2.* INTRASTATE—Released valuation will be at the amount cited in the carrier's rate tariff or tender. Shipments tendered to a carrier at rates cited in the applicable Household Goods Carrier Bureau and Mover's and Warehousemen's Association of America rate tenders are deemed released to a value of 60 cents per pound per article unless otherwise specifically annotated on the GBL.

3. INTERNATIONAL TGBL—30 cents per pound per article.

Note. Additional charges resulting from released valuation in excess of the prescribed minimums will be collected from the member by the appropriate military service finance center, except for those members no longer in pay status.

(c) *Professional books, papers, and equipment (PBP&E).* When the shipment contains PBP&E, enter "Weight includes _____ pounds of professional books, papers, and equipment." The carrier will insert the weight. When the actual weight is not readily available, a constructive weight based on 25 pounds per cubic foot will be used.

(d) *Service data.* Enter the following:

REQUESTED PICKUP DATE:
REQUIRED DELIVERY DATE:
DATE OF DELIVERY INTO SIT:

The ITO will enter the specified pickup and delivery dates. The carrier will enter the actual date of delivery into SIT and/or residence as applicable.

(e) *Customer Identification Code (CIC).* Rescinded.

(f) *Special authorization.* For shipment citing Army or Air Force appropriation (Key (11) above) made from or consigned to a point not specified in the change of station order, enter "Shipment authorized from (city/military installation and State/country) to (city and State/country)."

(g) *Use of Government-owned containers.* When Government-owned containers are used for shipment moving in TGBL service, annotate the GBL in accordance with the applicable Military Rate Tender. Also, the number and type of containers will be entered.

(h) *For Army and Air Force shipments only.* For shipments to or from oversea areas where service administrative weight limitations are in effect, add the following notation in the body of the GBL: "Maximum administrative weight allowance for household goods and unaccompanied baggage is (insert weight lbs.)." (Reference: M8003–2, JTR.)

Note. This provision is not applicable to those shipments for members being returned from oversea weight limitation areas for separation in a "non-pay" status.

(i) *Export-import annotations.*

1. For shipments moving by air, originating in CONUS and destined overseas, enter in capital letters: "FOR EXPORT."

2. For shipments moving by air, originating overseas and destined to CONUS, enter in capital letters: "IMPORTED BY AIR."

**(j)* For Navy shipments enter "Rank/Rate Code____" This code is the one digit alpha character immediately following the appropriation and subhead in the accounting data contained in the member's orders, e.g., NDH3 1731453.2252 G (Rank/Rate Code) 000022, etc." For consolidated shipments on separate GBLs, make an entry at bottom of the "Description of Articles" box, "NOTE: Shipment consolidated with GBL(s) # _____."

(k) *Firearms.* When the shipment contains firearms, enter—"This shipment contains firearms."

(14) *Key (14). NUMBERS OF PACKAGES AND WEIGHTS.* In the column headed "NUMBER OF PACKAGES" enter "GROSS," "TARE," and "NET." Also, for containerized shipment, enter "TOTAL NO. OF CONTAINERS" and "GROSS CUBE." The carrier will insert the weight, container, and cube information in the column headed "WEIGHTS."

(15) *Key (15). FOR USE OF DESTINATION CARRIER ONLY.* This section will be left blank for carrier use. The carrier will enter data as required for billing and by the

EXCERPT FROM BRIEF FILED ON BEHALF OF APPELLANT GREYHOUND VAN LINES, INC. IN *ANTON v. GREYHOUND VAN LINES, INC.*, No. 77-1409 (1st Cir. 1978)

ARGUMENT

I. THE DEFENDENT PROPERLY LIMITED ITS LIABILITY IN THIS CASE TO $.60 PER POUND PURSUANT TO THE PROVISIONS OF THE CARMACK AMENDMENT TO THE INTERSTATE COMMERCE ACT, 49 U.S.C. §20(11), WHEN THIS LIMITATION WAS AGREED TO IN WRITING BY THE DEFENDANT AND THE UNITED STATES AIR FORCE, THE PLAINTIFF'S AGENT FOR THE SHIPMENT OF HER GOODS, NOTWITHSTANDING THE FACT THAT THE PLAINTIFF HAD NO ACTUAL KNOWLEDGE OF THE LIMITATION.

The extent of Greyhound's liability in this case is controlled by the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. §20(11). It provides in pertinent part:

> Any common carrier . . . shall be liable . . . for any loss, damage, or injury to any property [shipped goods]. Provided, however, that the provisions hereof respecting liability for actual loss, damage or injury, notwithstanding any limitations of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply . . . second, to property . . . received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case

> such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not to exceed the value so declared or released. . . .

The Carmack Amendment imposes a single uniform federal regulation upon the obligations of interstate carriers for the destruction of shipped goods. *Adams Express Co. v. Croninger*, 226 U.S. 491 (1913); *New York, New Haven and Hartford R.R. v. Nothnagle*, 346 U.S. 128 (1953); *Atchison, Topeka and Santa Fe R.R. v. Herald*, 241 U.S. 371 (1916); *Southern R.R. v. Prescott*, 240 U.S. 637 (1916); *American Synthetic Rubber Corp. v. Louisville and Nashville R.R.*, 422 F.2d 462 (6th Cir. 1970); *Rocky Ford Moving Vans, Inc. v. United States*, 501 F.2d 1369 (8th Cir. 1974).

A common carrier, pursuant to the Carmack Amendment, becomes liable for "any loss, damage, or injury" to shipped goods in its possession. However, the Carmack Amendment enables the carrier to limit its liability for such loss. In order for the carrier to properly limit its liability, it must have an approved tariff schedule on file with the Interstate Commerce Commission establishing and maintaining rates "dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property" and the goods must have been shipped under the tariff schedule. Such limitations are valid and binding even where the limits are disproportionate to the actual value of the shipment. *Pierce Co. v. Wells Fargo and Co.*, 236 U.S. 278 (1915); *Lux Art Van Service, Inc. v. Pollard*, 344 F.2d 883 (9th Cir. 1965), *cert denied*, 382 U.S. 837 (1966).

Therefore, in order for Greyhound to successfully limit its liability in this case, it is simply necessary for Greyhound to establish that it had an approved tariff schedule on file with the Interstate Commerce Commission which afforded customers a choice of rates depend-

ing upon the released value of the goods shipped and establish that the plaintiff's household goods were shipped under the tariff schedule. It is well established that shippers are charged with notice of terms, conditions, and regulations contained in the tariff schedule pertaining to the carrier's liability which affect the rates of carriage and are bound by them. A shipper is presumed to have knowledge of the existence of alternate rates, based upon the declared value of the goods, and is therefore limited in recovery against a carrier in case of loss, to the amount shown by the tariff schedule as applicable to the rate charged. *American Railway Express Co. v. Daniel*, 269 U.S. 40 (1925); *American Railway Express Co. v. Lindhenburg*, 260 U.S. 584 (1923).

There is no requirement that the shipper actually sign the bill of lading which establishes the liability limits. *American Railway Express Co. v. Lindhenburg*, 260 U.S. 584 (1923).

In *Rocky Ford Moving Vans, Inc. v. United States*, 501 F.2d 1369 (8th Cir. 1974), it was shown that the shipper, an air force officer, had signed a bill of lading and had released his goods at a value of $.60 per pound and recovery was accordingly limited. However, the Court indicated that recovery would likewise have been limited without a showing that the officer had signed the bill of lading with a released value since the shipment in question was released under a United States Government Bill of Lading issued pursuant to an approved tariff schedule which provided that such shipments were "deemed released at a value of $.60 per pound per article unless otherwise specified on the bill". 501 F.2d at 1373 n7.

The defendant is not unmindful of the Supreme Court's observations in *New York, New Haven and Hartford R.R. v. Nothnagle*, 346 U.S. 128 (1953), where the Court indicated that a common carrier, to successfully limit its liability, must grant "its customers a fair

opportunity to choose between higher or lower liability by paying a correspondingly greater or lesser charge". Nevertheless, it still remains immaterial whether Juliet Anton, the plaintiff in this case, was ever personally aware of the $.60 per pound liability limitation. It is well established law that an agent who has authority to ship goods has authority to agree upon the terms of the shipment for its principal. *Great Northern Railway v. O'Connor*, 232 U.S. 508 (1914); *Lux Art Van Service, Inc. v. Pollard*, 344 F.2d 883 (9th Cir. 1965) (dicta), *cert denied*, 382 U.S. 837 (1966); *Lucien Piccard Watch Corp. v. American Airlines, Inc.*, 328 N.Y.S.2d 74, 68 Misc. 2d 664 (1972); *Universal Limited, Inc. v. S. Stern & Co.*, 311 N.Y.S.2d 317, 34 A.D. 2d 770 (1970); *Oregon Shortline Railway v. Blyth*, 118 P. 639 (Wyo. 1911); *Russell v. Erie R. Co.*, 59 A. 150 (N.J. 1904); *California Powder Works v. Atlantic and Pacific Ry.*, 45 P. 691 (Cal. 1896).

The fact surrounding the shipment of goods and the issuing of the various bills of lading in this case is not difficult to ascertain. The plaintiff, in connection with her release from active duty from the United States Air Force, directed the Air Force to place all of her household belongings in permanent storage at the Alabama Transfer & Warehouse Company in Montgomery, Alabama. (Statement of Agreed Facts, App. I-K) The plaintiff was subsequently notified by the Air Force that her goods could no longer remain in permanent storage at Government expense and that it would be necessary for her to make suitable arrangements to remove these goods from storage. (Transcript at 68, App. II-B) Accordingly, the plaintiff notified the Traffic Management Office at Maxwell Air Force Base that she wanted to have her goods removed from storage and, at Government expense, shipped to a warehouse in Manchester, New Hampshire. (Exhibit 6, App. III-D; Transcript at 75, App. II-B) Acting on this request, the United States Air

Force contacted Triple A Associates Moving & Storage Company, Greyhound's agent, and requested that Greyhound perform these services. (Swanner deposition at 10, App. II-F) The Traffic Management Office at Maxwell Air Force Base prepared a Government Bill of Lading and delivered it to Greyhound's agent. (Swanner deposition at 12, App. II-F) Although it appears unlikely that the Government Bill of Lading actually had the $.60 per pound limitation on liability inserted in it when it was issued, it is indisputable that the Government Bill of Lading made reference to Military and Government Rate Tariff No. 1-F and indicated that the shipment was being made pursuant to the terms of the tariff. (Exhibit 29, App. III-O) Following receipt of the Government Bill of Lading, Greyhound prepared its own internal bill of lading which was necessary in order to affix their ICC number to the shipment. (Exhibit 4, App. III-C; Swanner deposition at 17, App. II-F; Transcript at 311-312, App. II-G) The Greyhound Bill of Lading contains no liability limitation other than reference back to the Government Bill of Lading and the Military and Government Rate Tariff. While being shipped under the authority extended by the Government Bill of Lading, the plaintiff's goods were damaged.

It is also undisputed that the Military and Government Rate Tariff No. 1-F was properly on file with the Interstate Commerce Commission at all relevant times and that Greyhound was a participant in this tariff. (Transcript at 307, App. II-G; Exhibit 37 at 11, App. III-P) The District Court made a finding to this effect at page 345 in the transcript. (App. II-H) The tariff provides:

> (a) Shipments moving on Government Bills of Lading, Government Purchase Orders or Commercial Bills of Lading endorsed to be converted to a Government Bill of Lading prior to delivery, will be deemed released to a value of $.60 per pound per ar-

ticle, unless otherwise specifically annotated thereon.

(Exhibit 37 at 28, App. III-T)

Representatives from Greyhound Van Lines, John Swanner and James Bourdon, testified that all shipments for military members travel on Government Bills of Lading and that liability is limited to $.60 per pound. (Swanner deposition at 14, App. II-F; Transcript at 314, App. II-G) Mr. Bourdon testified as to the arrangements which could have been made to have the liability limits increased with proportionate increases in the amount charged for the shipment. (Transcript at 317, App. II-G)

Following the loss, the United States Air Force computed Greyhound's liability based upon the $.60 per pound limitation contained in the applicable rate tariff. (Exhibit 39, App. III-R) This liability, $2,896.03, was paid by Greyhound to the United States Government for the loss. (Transcript at 319, App. II-G)

Mr. Swanner testified that he believed that the United States Air Force was acting as an agent for the plaintiff in connection with her shipment and that the Air Force had the authority to have the goods released at a liability limit of $.60 per pound. (Swanner deposition at 20, App. II-F) Furthermore, the District Court, after hearing all of the evidence, found that "the plaintiff, Miss Anton, did make the United States Air Force her agent" in connection with this shipment. (Transcript at 349, App. II-H) The Court further found that Greyhound had properly limited its liability with the United States Air Force to $.60 per pound but that, since the plaintiff was not aware of the limitation, the defendant could not benefit from the limitation. (Transcript at 349, App. II-H) Accordingly, a directed verdict on the issue of liability was entered in the plaintiff's favor. It is submitted that this constitutes error as a matter of law.

The defendant has been able to locate two cases which appear to be directly on point. The case of *Holmes*

v. National Van Lines, Inc., 350 P.2d 864 (Wash. 1960), involves an employee of Boeing Aircraft Company who was transferred by his employer. The employer made all arrangements for the shipment of the employee's household goods. As in this case, Boeing selected the carrier, negotiated the terms of carriage and paid the carrier's fee. The Court found that:

> Boeing was, beyond all question, the agent of the shipper in selecting the carrier and in negotiating the terms of the carriage, and in paying for the same.

350 P.2d at 866. The bill of lading pertaining to these goods was not signed by either the employee or by Boeing. However, the Court, in limiting the carrier's liability to that provided in the bill of lading, stated:

> Signature is, of course, the best evidence of agreement, but is not required. . . . Neither is delivery to and acceptance of the bill of lading by the shipper, prior to shipment, necessary. . . . It is sufficient, if the writing expresses the agreement of the parties. (citations omitted)

350 P.2d at 866.

In *Norman v. Burham's Van Service*, 73 So.2d 640 (La. 1954), the plaintiff was a naval officer, who, upon release from active duty, was having his household goods shipped from Portsmouth, Virginia to New Orleans. As here, all arrangements for the shipment were made by the United States Navy and the Navy paid the carrier's costs. The Court held:

> In view of these facts, we can only come to the conclusion that the Navy Department, through its supply officer at Portsmouth, acted in the capacity of plaintiff's agent in the matter of the shipment and the plaintiff became effectively bound by whatever

> arrangements the supply officer had made with the carrier.
>
> . . . .
>
> A carrier has the right to assume that an agent or freight forwarder has the authority to agree upon the terms of the shipment for his principal.

73 So.2d at 643. Accordingly, the Court limited the carrier's liability to that established by the applicable tariff schedule, in that case $.30 per pound.

Furthermore, it should be noted that Government regulations provide members of the military with an option of shipping items of extraordinary value in a manner which will provide additional liability protection for the service member. However, these regulations provide that "increased valuation charges incurred over and above the carrier's lowest released valuation will be borne by the member". Personal Property Traffic Management Regulation, DOD4400.34-R, §4008(b). (App. III-N) To permit the plaintiff to recover more than the agreed limits of liability, after the benefits of the lower rates based on the $.60 per pound figure had been received, would "violate the plainest principles of fair dealing". *American Railway Express Co. v. Lindhenburg*, 260 U.S. 584, 592 (1923).

The defendant is well aware that there are numerous cases in which the owner of household goods is not bound by limitations in liability agreed to by the party arranging for the shipment. *Lux Art Van Service, Inc. v. Pollard*, 344 F.2d 883, *cert denied*, 382 U.S. 837 (1966). However, those cases involve situations where the shipper's agent had no actual authority to even ship the goods. In *Lux Art Van Service, Inc. v. Pollard*, the "agent" simply had possession of the item and had no authority to ship it.

In this case, the plaintiff entrusted the entire move to the United States Air Force. The Air Force made all contact with the defendant, issued the appropriate bill of

lading and paid the carrier for the services. The carrier, Greyhound, had a right to believe and did believe that the Air Force was the plaintiff's agent for all purposes in connection with the move and agreed with the Air Force that the goods would be released at $.60 per pound. Accordingly, the plaintiff should now be bound by the agreement between the carrier and the United States Air Force and Greyhound's liability should properly be limited to $.60 per pound or $2,896.03 which has already been paid.

Supreme Court, U. S.
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No. 80-223

In the Supreme Court of the United States

OCTOBER TERM, 1980

DONALD D. HOWE, ET AL., PETITIONERS

v.

ALLIED VAN LINES, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the United States, through the Department of Defense, cannot contract with common carriers to limit the carriers' liability for loss of the goods of military personnel, shipped on a government bill of lading at government expense, without approval of the Interstate Commerce Commission pursuant to 49 U.S.C. 20(11),[1] despite another provision in the Interstate Commerce Act (49 U.S.C. 22(1)) which states that

*The United States was a third party defendant in four of the 12 cases consolidated for decision by the court of appeals (Pet. App. A24-A27).

[1]The Interstate Commerce Act has been recodified at 49 U.S.C. (Supp. II) 10101-11916. Our references will be to the earlier codification, as in the opinion of the court of appeals and the petition, since these cases arose prior to recodification (Pet. App. A29 n.1).

"[n]othing in this chapter shall prevent the carriage * * * of property free or at reduced rates for the United States * * *."

1. Petitioners[2] are or were military personnel who had their household goods shipped by the government at its expense through common carriers, pursuant to their statutory entitlement under 37 U.S.C. 406. The goods were shipped on government bills of lading at rates lower than those available to the general public (Pet. App. A28-A29). These lower rates were established in Military Rate Tender No. 1-H, ICC No. 35 ("MRT 1-H"), which contains the continuous offer of some 1,500 common carriers to ship such goods, but also limits the carriers' liability for loss or damage to 60 cents per pound per article, absent a higher declared value and higher rate.

Petitioner Howe was specifically advised of and acknowledged the carrier's limited liability; he was also advised of his right to claim up to $15,000 from the United States for losses above the carrier's liability pursuant to 31 U.S.C. 241-243 (Pet. App. A30). In addition, petitioner Howe purchased insurance of $25,000 from a private company to cover any loss not protected by the limited liability of the common carrier and the United States. Petitioner's household goods were destroyed as a result of an accident during shipment. He has been or can be made whole for his loss from the combined liability of the common carrier, the United States, and his private insurance company (*ibid.*).

Petitioner Howe sued the carrier, respondent Allied Van Lines, under 49 U.S.C. 20(11), for the full value of

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[2]The court of appeals treated the factual circumstances of petitioner Howe's case as typical of the others (Pet. App. A29). We will do likewise. The district court in petitioner Howe's case adopted the parties' lengthy stipulation of facts (Pet. App. A1, A9-A10).

his destroyed household goods. Allied had accepted petitioner's goods from the Military Traffic Management Command (MTMC), as shipper, on a government bill of lading (Pet. App. A30). Obviously, it is petitioner's private insurance company, subrogated to his claim, that is interested in imposing full liability on the common carrier (*ibid.*).[3]

The district court granted judgment in favor of Allied and the other common carriers, upholding their claims of limited liability under their rate tender with the government (MRT 1-H) (Pet. App. A1-A23). The court of appeals affirmed (Pet. App. A28-A52; 622 F. 2d 1147).

2. The decision below is correct and does not conflict with any decision of this Court or other courts of appeals. In a careful and thorough opinion, the court of appeals reviewed the legislative history of the pertinent provisions of the Interstate Commerce Act and concluded that petitioners' claims are without merit (Pet. App. A31-A48). It also reviewed the principal cases relied upon by petitioners and correctly concluded that those cases do not support petitioners' argument (Pet. App. A44-A50). Accordingly, we submit that there is no reason for further review by this Court.

a. The court of appeals held that under 49 U.S.C. 22 the government is free to contract with common carriers for reduced transportation rates and concomitant declared value limitations without obtaining the approval of the Interstate Commerce Commission, notwithstanding 49 U.S.C. 20(11), which provides that Commission

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[3]Insurance companies were parties to some of the cases below and are petitioners here (Pet. App. 1 n.*). The court of appeals acknowledged that some individual service members also may be interested in a possible recovery against the carriers (Pet. App. A31).

approval is generally required for declared value limitations to be valid.[4]

As correctly noted by petitioners, "[t]he Department of Defense is the nation's single largest shipper of household goods" (Pet. 7). This is so because Congress has provided that military personnel are "entitled to transportation * * * of * * * household effects * * * subject to [certain] conditions and limitations * * * prescribed by the Secretaries concerned * * * ." 37 U.S.C. 406(b) and (c). Pursuant to this congressional authorization, the Secretary of Defense has promulgated regulations that provide that the Military Traffic Management and Terminal Service (now the Military Traffic Management Command) shall:

> Be the sole negotiator, worldwide, with U.S. household goods carriers and storage firms *on rates and all other matters incidental* to the transportation and storage of personal property.

32 C.F.R. 173.4(c)(9) (1978) (emphasis added). These regulations have the force of law. *Public Utilities Comm'n of California* v. *United States*, 355 U.S. 534, 542 (1958).

This Court has acknowledged that Congress has granted the military departments broad authority to negotiate with commercial carriers for the most favorable transportation rates obtainable, free of state regulation. *Public Utilities Comm'n of California* v. *United States*, *supra*, 355 U.S. at 543; *United States* v. *Georgia Pub. Serv. Comm'n*, 371 U.S. 285, 292-293 (1963). The Court

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[4]Contrary to petitioners' assertion (Pet. 7), the court of appeals did not seek to imply an exception to a statute, as was attempted in *United States* v. *Rutherford*, 442 U.S. 544 (1979). The court of appeals simply sought to give effect to the Interstate Commerce Act as a whole, including 49 U.S.C. 22, which petitioners would have this Court ignore.

has also explicitly stated that 49 U.S.C. 22 "exempts transportation for the United States from the rate provisions of [the Interstate Commerce] Act." 355 U.S. at 543 n.10. See also *Transportation of Government Traffic,* 131 M.C.C. 845, 857 (1979). As the court below concluded (Pet. App. A48), "[a] government shipper, exempted under section 22, who agrees to a declared value, * * * acts as a self-insurer in order to seek a rate concession to relieve the carrier of part of the risk of loss. Thus, since a government shipper may lawfully exact a discriminatory rate, there is no reason to require adherence to the antidiscrimination released value provisions of section 20(11)."[5]

Even before enactment of the Interstate Commerce Act, this Court recognized that "[t]he rate of freight is indissolubly bound up with the valuation * * * ," and refused to allow a shipper to recover the claimed full value of horses lost in shipment where the rate was set on the basis of maximum values specified in the bill of lading. *Hart* v. *Pennsylvania R.R.,* 112 U.S. 331, 337 (1884). This principle was reiterated long after passage of the Act as well:

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[5]Petitioners' reliance on Section 5(b)(4)(C) of the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 795 (Pet. 16-17; Pet. App. A70), as evidence of a contrary intent, is groundless. That provision does nothing more than continue the requirement that carriers of household goods for the government obtain a certificate of public convenience and necessity. It has nothing to do with the issue presented here. Section 12 of the Act, 94 Stat. 802 (Pet. 17; Pet. App. A73) is equally irrelevant, since that section does not relate to the authority of the government to contract for reduced rates under 49 U.S.C. (Supp. II) 10721, the successor to Section 22. In addition, we fail to perceive how the congressional intent embodied in this subsequently enacted legislation lends any support to petitioners' construction of the provisions of the Interstate Commerce Act at issue here.

> Having accepted the benefit of the lower rate dependent upon the specified valuation, the respondent [shipper] is estopped from asserting a higher value. To allow him to do so would be to violate the plainest principles of fair dealing.

American Ry. Express Co. v. *Lindenburg*, 260 U.S. 584, 592 (1923). The court of appeals' construction of the Interstate Commerce Act is fully consistent with this settled principle.

b. There is no conflict among the courts of appeals on the issue urged by petitioners. *Anton* v. *Greyhound Van Lines, Inc.*, 591 F. 2d 103 (1st Cir. 1978), on which they principally rely to show such a conflict, turned on the absence of a specific limitation of value in the bill of lading and the supposed absence of any agreement to such a limitation by the owner of the goods or the military branch. Here, petitioner Howe was explicitly advised of the carrier's limited liability and the bill of lading contained such a limitation. Moreover, the critical issue in this case is the impact of 49 U.S.C. 22 on the carrier's liability. As shown above, the court of appeals correctly held that Section 22 permitted the carrier to limit its liability in its agreement with the United States. Since, as the court below noted (Pet. App. A49), the impact of Section 22 was not even addressed by the First Circuit in *Anton*, it is clear that there is no conflict for this Court to resolve.[6]

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[6]The efforts of three of the petitioners (Pet. 10-11) to base their claim on the supposed absence of a written limitation of liability is unavailing. As petitioners concede (Pet. 4), these cases were decided in the district court and the court of appeals on the understanding that petitioner Howe's factual circumstances were typical of all petitioners (Pet. App. A1, A9, A29-A31). Petitioners' efforts to urge factual distinctions thus come too late. In addition, each of the bills

In short, the result urged by petitioners is contrary to Congress' intent in enacting Section 22 and would seriously hamper the government's ability to transport economically and efficiently the myriad goods essential to its operation.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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of lading involved incorporates the terms of the carriers' rate tenders, which expressly refer to the released value limitation of 60 cents per pound per article. See Briefs in Opposition of Respondents American Red Ball Transit Co., Inc. and Engel Van Lines, Inc., at 6-7.

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